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In the

Appellate Court of Maryland

No. ACM-REG-1325-2024

September Term, 2024

JUSTIN KYLE HOLDER

Appellant,

v.

WASHINGTON COUNTY BOARD OF COUNTY COMMISSIONERS, ET AL.,

Appellees.

Appeal from the Circuit Court for Washington County, Maryland
(Hon. Judge Richard E. Jordan)

RECORD EXTRACT – VOLUME 2

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Record Extract
ACM-REG-1325-2024
Sept. Term 2024; No. 1325

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IN THE CIRCUIT COURT FOR WASHINGTON COUNTY, MARYLAND

JUSTIN KYLE HOLDER *

Petitioner *

* CASE NO.: C-21-CV-21-97

BOARD OF WASHINGTON COUNTY *

COMMISSIONERS, et. Al *

*

****

OFFICIAL TRANSCRIPT OF PROCEEDINGS

Hagerstown, Maryland 21740

October 23, 2023

BEFORE:

The Honorable Richard E. Jordan

Appearances:

Petitioner: Jacob Weddle, Esq.

Respondents: Kevin Karpinski, Esq.

Transcribed from electronic recording by:

Tressa K. Clifford
Circuit Court for Washington County
Court House Annex
24 Summit Avenue
Hagerstown, Maryland 21740
240-313-2544

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P R O C E E D I N G S

THE BAILIFF: All rise. Circuit Court for Washington is now in session. The Honorable Richard Jordan presiding.

THE COURT: Good morning.

MR. HOLDER: Good morning.

MR. WEDDLE: Good morning.

MR. BRIGHT: Good morning.

MR. DOWNEY: Good morning.

MR. KARPINSKI: Good morning, Your Honor.

THE COURT: Please have a seat. In the Matter of Justin Holder, case number C-21-CV-21-0197, sorry just 097. Counsel identify for the record please.

MR. WEDDLE: Good morning, Your Honor, Jake Weddle on behalf of Justin Holder who's sitting to my right.

MR. HOLDER: Good morning, Your Honor.

THE COURT: Good morning.

MR. KARPINSKI: Good morning, Your Honor, Kevin Karpinski on behalf of the defendants/respondents, Kirk Downey, Andrew Bright and the Board of County Commissioners for the Washington County.

THE COURT: Good morning.

MR. KARPINSKI: Good morning.

THE COURT: I didn't double check my notes before

coming in, but I believe we finished the Judge's testimony and we're going to resume this morning, correct? Everybody agree?

MR. WEDDLE: Your Honor, it is my understanding that we are going to finish the cross examination of Judge Michael. We finished the direct.

THE COURT: Okay, okay.

MR. WEDDLE: We'll begin the cross.

THE COURT: All right.

MR. WEDDLE: I did want to raise one sort of housekeeping matter before we got started.

THE COURT: Okay.

MR. WEDDLE: I was advised by the clerk last week that I believe Petitioners or Plaintiff's Exhibits 7, 14, 15 and 23 had not been moved into evidence and I'd like to do that just before we get started today.

THE COURT: Mr. Karpinski, any issue on those?

MR. KARPINSKI: What were the, what, what were the numbers again?

THE COURT: Seven --

MR. WEDDLE: Seven, 14, 15 and 23.

MR. KARPINSKI: Seven, no objection as to 7, Your Honor. Fourteen I do object on the basis of relevance. What was the other one, 23?

MR. WEDDLE: Fifteen and 23.

MR. KARPINSKI: Fifteen I object to on the basis of relevance and 23 I object on the basis of relevance.

THE COURT: Let me see what we've got here.

MR. KARPINSKI: And, Your Honor, I can articulate more on, on my --

THE COURT: Okay, it'd be helpful for me to see them. Mr. Clerk do you have those?

THE CLERK: He just put them on the witness stand.

MR. HOLDER: They're right here.

MR. WEDDLE: Your Honor, may I approach? I'll hand them up to you.

THE COURT: Oh, yeah, please. Can you -- did you say 7 you did object to or just the one's after that?

MR. KARPINSKI: Seven I did not object to, Your Honor.

THE COURT: Okay.

MR. KARPINKSI: And the reason for my objection, Your Honor is, you know, we spent about an hour and a half or two hours on, on Wednesday with Mr. Greivell testifying regarding the merits of any criminal proceedings against Mr. Holder and, you know, I respectfully submit, we're not here to relitigate that issue. The issue is what information was provided to Mr. Bright when he made a decision to deny Mr. Holder's request in August and

October? And while Mr. Greivell's, I think we all found his history lesson to be somewhat academically interesting, I object because this seems to be a collateral attack on the propriety of any criminal matters that were initiated or being, had been initiated by the State's Attorney's Office. And I think the record's clear what Mr. Bright was told. We put into evidence the email exchanges between Mr. Bright and Mr. Michael. That was the basis for that decision. I think we've kind strayed far afield when we've gotten into these areas of whether there, there was a wagon trail. Whether -- where Antietam Drive was. The propriety of, you know, of a variety of things and those exhibits go to all of that and that's why I objected on Wednesday as to the relevance of that testimony and to quite frankly the admissibility of a number of those exhibits.

THE COURT: Okay. Mr. Weston -- Mr. Weddle do you want to respond?

MR. WEDDLE: Sure, these exhibits that Mr., we introduced through Mr. Greivell go to the reasonableness of the denial. We spent, as Mr. Karpinski indicated, some time walking Mr. Greivell through these exhibits. Mr. Karpinski interposed an objection of relevance at that time to all of the ones that were moved in. Your Honor denied that objection and admitted the various other

emails, which I believe start at Plaintiff's 10 with, Mr. Greivell worked forward through 23. So, I would ask that Plaintiff's 14, 15 and 23 be given a similar ruling as to the admissibility.

THE COURT: Well, let's talk about them individually just because I admitted some others doesn't mean I was correct. Seriously.

MR. WEDDLE: Okay, okay. Fair enough. With respect --

THE COURT: You can strike that from the record. I'm only kidding. I'm only kidding.

MR. WEDDLE: With respect to 14 it indicates it's an exchange between Mr. Michael and Mr. Greivell and it indicates that on September 28th Mr. Greivell provided Mr. Michael with a number of documents relating, relating to -- if Your Honor recalls there was an exchange of correspondence regarding the pending, the four pending DNR charges. And Mr. Greivell in September had provided Mr. Michael with a number of documents to look at in support of Mr. Holder's defense in that, in the case.

The Plaintiff's Exhibit 14 talks about Mr. Michael said that, "I'm sure the documents that Mr. Greivell provided were fascinated, fascinating, excuse me, but I won't be reading them." One of the issues in this case is whether or not there was an ongoing investigation

and the reasonableness of that investigation, and the case law supports that if, if an investigation, if a purported investigation for example is stalled, is not going forward, is delayed that that, that is not a basis to withhold the documents because there's no investigation going on. There's nothing to prejudice. So --

THE COURT: What, excuse me, but when -- how long had the investigation been going on at the time that the denial was made for the PIA request?

MR. WEDDLE: Well, Your Honor, it's our, it's our contention that there never was an investigation. I mean that's our, that's our, that's our core contention.

The charges at issue here were filed in June Of 2020. The four DNR charges were filed in June of 2020. The string of correspondence goes to show that it's an admission for Mr. Michael, quite frankly, that nothing is going on. There is no investigation. I don't have time to prosecute this. He says, "I'm sure that they're fascinating, but I won't be reading them." And again, these go to further on in the email it states, "You know, it's the State's intention to stay the tickets and file a malicious destruction of prosecution charge." So, it's, it's not that they are investigating the four DNR charges. They're looking to file additional incarcerable charges in, in addition to those four DNR charges.

This, this, this case -- I mean this goes to show that they're -- it, it completely debunks the theory that there was an investigation going forward.

Fifteen is, is, is more of the same. Fifteen is the estimate from the State as to the amount of damage Mr. Holder purportedly did on the Weverton-Roxbury Rail Trail.

THE COURT: Let me, let me hold you up there.

MR. WEDDLE: Sure.

THE COURT: Maybe I, I didn't articulate it well enough, but part of my last question was how long the investigation, for the sake of argument it was an investigation, was going on? You're saying the start of it was June 20th? June of 20?

MR. WEDDLE: Correct.

THE COURT: Okay, and then the denial of the request was when?

MR. WEDDLE: August 3rd, August 3rd, August 4th, 2020. The request was made on August 3rd, I believe the request was denied on August 4.

THE COURT: Okay.

MR. WEDDLE: And, and again, I mean the, the, the timing, the timing is important here because Your Honor raises an inter -- an interesting point. The denial was on August 4, I'd say seven weeks later we got documents from Mr. Michael saying I'm not going to read the

documents, Mr. Greivell, you're providing me about those DNR charges. I'm sure they're fascinating I'm not reading them. We're going to stay the -- our intention is to stay the case and then, and then file malicious destruction of property charges. You know, and, and, and again it goes to this is the DNR's opinion, your opinion, the opinions of experts won't matter a hill of beans compared to the only opinion that matters and that's the equity court's, that's the equity judge's opinion. No further comment needs to be given regarding your client's actions.

So, again it's a, it's a recognition that the State is, the State is just not taking up this effort. There are further emails that indicate that, but this is particularly germane because Mr. Michael's telling Mr. Holder's attorney basically we're not going to do anything moving forward. Do you want --

THE COURT: Go ahead with where you left off.

MR. WEDDLE: With respect to 15, 15 relates to the damages that the State's expert purports that Mr. Holder did on the Rail Trail. It's $462.50 as, as told by that, by that Forester.

One of the interesting and notable pieces of evidence regarding this Exhibit is that the Forester himself, at the end of the first paragraph says that the damage to the extent that there was any was on private

property adjacent to the Weverton Rail Trail rather than on the public land itself. So, you've got the Forester saying this damage isn't even on State property. Again, this is indicia, this is notice to the prosecution that they have no case.

THE COURT: Let me just ask you --

MR. WEDDLE: Sure.

THE COURT: -- do you need a ruling on these exhibits before finishing the testimony of Judge Michael?

MR. WEDDLE: I, I, I, I don't think so.

THE COURT: Mr. Karpinski, do you?

MR. KARPINSKI: I don't think so, Your Honor. But I, I do want to highlight, and I understand Your Honor took, admitted a variety of documents, exhibits and said you'd give it whatever weight. And one of the issues that Your Honor's going to have to decide is, is that the State's Attorney's Office, Judge Michael, the State of Maryland are not defendants in this case. And this is a situation of, you know, is Mr. Downey liable? Is Mr. Bright liable? Is Washington County Government liable? And with regard to what Judge Michael said in response to Andrew Bright's email, "Hello, Joe, as you will see from the thread below, we received the PIA request from Justin Holder seeking emails from an email belonging to Christine or Scott Morral 'and any sheriff deputy, county official'.

The search by IT yielded only these between the Morral and you.

Question, are these emails in reference to an ongoing investigation protected by Government General Provisions Article 4-351? If not, I think they should, I think I should send them to him."

The response from the State's Attorney's Office was, "Ongoing investigation and pending charges." So, my point, Your Honor is, is that we're trying to relitigate. Mr. Bright doesn't know the extent of whatever investigation is going on. Arguably Mr. Bright, these records quite frankly are not even responsive to anything involving to the County because it involves the State's Attorney's Office, a State entity and Mr. Holder in his request. So, you know, to try and relitigate the issue of the propriety of what Judge Michael did in his role as Deputy State's Attorney is really not the question that the Court has before it.

What the Court has before it is whether Mr. Bright, Mr., Mr. Downey and Washington County acted appropriately based upon information that was supplied to it by the State's Attorney's Office that there was a pending, ongoing investigation.

And so, again, all this testimony that we heard from Mr. Greivell on Wednesday and what I anticipate will

be ongoing testimony about what the State's Attorney's Office was doing, I think respectfully misses the mark. Because the question is, what did these gentlemen do to my left and what did Washington County do in response to the requests that were sent? Quite frankly, probably should have been sent to the State's Attorney's Office. What your Honor's going to hear is, the State's Attorney's Office is on the County's IT server. And so, you know, that's the only reason why the County would even have these records.

THE COURT: Okay. Do you need a ruling before Judge Michael testifies?

MR. KARPINSKI: I do not, Your Honor.

THE COURT: All right, let's, let's --

MR. KARPINSKI: I would like --

THE COURT: Let's do that.

MR. KARPINSKI: Yeah.

THE COURT: We'll come back to this. We won't reargue it and I'll, I'll rule.

MR. KARPINSKI: Thank you.

THE COURT: Okay. So --

MR. WEDDLE: Thank you, Your Honor. I'd like to call Judge Michael to the stand.

JUDGE MICHAEL: Before I start, just to let you know, Judge, Your Honor, that I have taken -- I'm the duty

judge today given our shortage and there is a pending matter that I'll need to take at some point.

THE COURT: Okay.

JUDGE MICHAEL: Domestic violence matter. It shouldn't take more than -- whenever you're ready to take a recess I'll take that matter and the reporter will let them know. So, you don't have to rush into it. It's a (unintelligible) matter.

THE COURT: Okay. Anytime you need to step off we'll do that.

JUDGE MICHAEL: All right. Okay.

THE COURT: Just take --

JUDGE MICHAEL: I'm already sworn but I'd be happy to swear again if you need me to.

THE COURT: Nope, you're already sworn.

JUDGE MICHAEL: Okay.

THE COURT: So, you're still under oath. Okay, Mr. Weddle?

JOSEPH S. MICHAEL

called as a witness, produced on call of the respondents, first having been duly sworn according to law, was examined and testified as follows:

CROSS EXAMINATION

BY MR. WEDDLE:

Q Thank you. Mr. Michael, last week you testified

that you've been a prosecutor for 29 years, is that correct?

A Yeah.

Q Okay, and during your 29 years of prosecution it was your job and responsibility to prosecute criminal cases fairly on behalf all citizens of Washington County, correct?

A Among other things, yeah.

Q And in fact during your deposition on February 15th, 2020, you testified that the people of Washington County is who my clients are, right?

A Right.

Q And Mr. Holder is a citizen of Washington County, correct?

A Yes. I mean as far as I know, yeah.

Q Okay. And while you were Deputy State's Attorney your job was to represent Mr. Holder, one of your constituents, correct?

MR. KARPINSKI: Objection, relevance.

THE COURT: What is the relevance?

MR. WEDDLE: Bias.

THE COURT: Bias towards a resident?

MR. WEDDLE: Toward Mr. Holder.

THE COURT: Well, you're going to need to create a better foundation than to just say he's biased, that the

witness is biased and that the petitioner, plaintiff, whatever we're calling him because there's different names, is a citizen that somehow that ties a bias. So, you're going to have lay a foundation to go there if you can.

BY MR. WEDDLE:

Q Mr., Mr. Michael, during your deposition you --

A It's Judge Michael by the way.

Q Judge Michael, during your deposition you stated that Mr. Holder is a jackass, correct?

A Yes. He can be. He also can be very pleasant. But he can be a jackass.

Q Okay. And you called him, you called him one of the biggest troublemakers in the County, did you not?

MR. KARPINSKI: Objection, Your Honor.

THE COURT: Overruled.

THE WITNESS: I don't, I don't know if I used those words, but I would agree with that characterization as far as, troublemaker, just taking up more resources than he deserves, yes. Because he --

BY MR. WEDDLE:

Q Sir --

A An enormous amount of resources for a tempest to keep up.

Q Sir, it was just a yes or no question. You

called, you called him one of the biggest troublemakers in the County, correct?

A I agree that that's true. Whether I called him that or not I can't recall.

Q Okay, and during, during a court proceeding on or about September 2nd, 20, I believe 2020, 2020, you, you handed, -- you were there on a hearing with respect to wiretapping charges for Christine Morral, correct?

A I don't know.

Q Do you recall handing, during that hearing handing Mr. Holder a discovery letter during a hearing for Ms. Morral when he was to be a witness in that case?

MR. KARPINSKI: Objection, relevance, Your Honor.

THE COURT: What's the response?

MR. WEDDLE: Your Honor, I think the testimony should show that during this hearing this wiretapping hearing in which Christine Hold -- Christine Morral was the defendant, Judge Michael, while Mr. Holder was there as a witness, basically put a discovery letter with respect to these DNR charges in his face and handed them to him when the case was actually about being prosecuted against Ms. Morral.

THE COURT: Okay, objection sustained.

BY MR. WEDDLE:

Q Judge Michael on June 8th or 9th, Mr. Holder was

charged with the four DNR citations that we've, we've talked about, correct?

A I, you know, I didn't charge him. I didn't know about it until later. But whatever the date on the citation is correct.

Q And those charges were just quickly: disturbing a plant rocker mineral; destroying a tree; driving in a non-designated area; and private clearing on State Park lands. Is that correct?

MR. KARPINSKI: Objection, relevance, Your Honor.

THE COURT: Response?

MR. WEDDLE: They're the four DNR charges at issue. I'm just trying to --

MR. KARPINSKI: Well --

THE COURT: The ones that were under investigation?

MR. WEDDLE: Well --

THE COURT: Or alleged by the other side to have been under investigation?

MR. WEDDLE: Yes, Your Honor.

THE COURT: Overruled at this point.

THE WITNESS: So those, those were, there were those citations, but there were other cases under investigation. I think you need to realize that there were, in addition to those there was the maelstrom that

travels with Mr. Holder that was ongoing. It was ongoing until I left the office.

BY MR. WEDDLE:

Q Okay. We're just talking about the four DNR citations. Will you focus on --

A I was talking about the investigation. The investigation that I was referring to, to in, in the response is overall investigation of the troublemaking that your client was making in Keedysville with Mr. Estes, with Ms. Morral, with a variety of other, of other neighbors about this. It was -- we were fielding calls, as I said. He was a burr under the saddle of our operation during, during a pandemic. So, he was, I was -- you know, it's not just the, not just the trespass or whatever those citations are, you know, there are peace orders and harassment and allegations with Mr., Mr. Estes. All of it was under investigation.

Q Your Honor, I'm going to move to strike. Completely non-responsive to my question.

THE COURT: Overruled.

BY MR. WEDDLE:

Q You testified that Jeremy Miller was the Natural Resource Police charging officer, is that correct?

A I don't know if it was or not. I saw, I saw Jeremy the other day on the farm, and he was back, he came

back. They're, they're all young and they all look alike and they're all very friendly and very adept. But I think it was Jeremy Miller. But it could have been somebody else.

Q And in your 29 year career as a prosecutor you never prosecuted anyone else for DNR citations related to the Weverton-Roxbury Rail Trail, correct?

A I don't know that anybody else was charged. I, I was not, I'm not aware that anybody else was ever charged.

Q And on June 26, 2020, Ms. Morral began to write a string of emails which we've marked as Exhibit 7, correct?

A I haven't look at Exhibit 7 other than the, the portion that you were asking about the other day. But she was corresponding with the office, yes. That was part of the ongoing investigation was, you know, her, her being aggrieved by Mr. Holder and Mr. Holder being aggrieved by her.

Q Your Honor, may I approach to, to get the stack of exhibits?

THE COURT: Yeah. You want in particular the ones you just moved in or the entire group?

MR. WEDDLE: I'll just take the entire group.

THE COURT: Okay, 14 is sticking out at the bottom.

BY MR. WEDDLE:

Q Thank you. Judge I'm going to spend some time with Defendant's Exhibit 7 so I'm trying to get that in front of you.

A All right. That's okay. I can't -- you have to understand, I can't read very well unless I have total silence, I, I have a learning difficulty. So, it's very difficult for me to look at a written exhibit without, you know, looking at it ahead of time. So, it's, it, it just looks like gobbledygook to me right now.

Q Okay. We'll try to get through it.

A All right.

Q On Holder PIA 70 on June 26, 2020, at 10:15 a.m. Ms. Morral advised you that she wished to speak with you by phone, correct?

A I don't know.

Q You advised her that, "The State conducts its business in the sunshine and is subject to the Maryland Public Information Act", correct?

A Correct. I mean I agree with that statement. Whether I advised her of that or not I can't recall.

Q And you were not speaking to her at this time about Mr. Holder, correct?

A The only thing I ever talked to her about was --

MR. KARPINSKI: Objection.

THE WITNESS: Oh, I'm sorry.

THE COURT: Sustained.

BY MR. WEDDLE:

Q Later you say, "If the charges are filed then the defendant in any charge is entitled to any statements of any witness against him or her, so, talking on the phone will not protect your identity or communication for discovery in a criminal case".

MR. KARPINSKI: Objection, Your Honor.

THE COURT: Sustained. What, where are you going with this, Mr. Weddle?

MR. WEDDLE: Well, I mean he's using the term "If charges are filed". He's, he's -- this is clearly about, this is not about, this is not about Mr. Holder trespassing on Ben Estes's property. This is not about Mr. Holder trespassing on Christine Morral's property. This is hypothetical, if charges are filed. It's not even clear that he's talking about DNR charges. The, the document in Exhibit 7 will show that he's talking about -- he's giving private advice to Christine Morral about her backyard, her title insurance, and, you know, he's -- when the conversation finally does turn to him, he again tells her that he doesn't have a case. So, it goes to the reasonableness of the investigation.

THE COURT: Well, I thought that was part of what you wanted me to determine. Reasonable, reasonableness of

investigation. But really, it's a matter of whether there was an investigation or not. Isn't that the issue?

MR. WEDDLE: Yes, and I think at the front end there was no investigation. But if, but if Your Honor decides that there was, we have to look at the reasonableness of it. I mean this is, these documents, I mean they're astounding in the fact that they show Judge Michael's impressions at the time of the case.

THE COURT: But doesn't the statute talk about investigations, not reasonable investigations?

MR. WEDDLE: The, well the statute, the statute, well the statute gives persons of interest a heightened standard, a heightened right and the, the custodian, which is the County in this case has the burden to show that the denial of these records would interfere with a valid and proper law enforcement proceeding. And the custodian needs to show that each and every one of these documents does that. And again, they can't do it because there's no investigation. There's no valid and proper law enforcement investigation. And that's what this testimony is, is here to elicit.

MR. KARPENSKI: Well, I see that's when we started the trial that's what I, you know -- I respectfully disagree. The question is whether there was a reasonable basis for what Mr. Bright did based upon

information and representations made by the State's Attorney's Office. And I know Your Honor has presided over a zillion cases. To think that the County Attorney, the County Attorney's Office has an insight as to what's going on in the Sheriff's Office and in the State's Attorney's Office and has an obligation, a legal obligation to go back and say to the State's Attorney, now are you sure that you -- you got a, you got a good solid investigation here? I mean that's in essence what the plaintiff, Mr. Holder is trying to assert here which is Mr. Bright should have gone and said, you know what, Mr. Michael, I know you're the Deputy State's Attorney but I'm going to go ahead, I'm going to ahead and make a decision on whether you as the Deputy State's Attorney should be doing your job in terms of what you're investigating and what you're not investigating. And we all know that's not how this works. It simply does not work this way.

The representation was made to the County Attorney's Office and as Judge Michael's testified to it that there were ongoing investigations. There were ongoing investigations until he left that office and took, took -- was elevated to the Circuit Court for Washington County. And to sit here and sit there and go, Mr. Bright can be held civilly liable, or the County can be held civilly liable because it relied upon information provided

by the State's Attorney or through a denial, I respectfully submit is not the state of the law. And so, revising what Judge Michael was doing in his role as Deputy State's Attorney is, is basically, it's one, irrelevant. And we're going down a rabbit hole that we spent two hours on Wednesday going ahead and doing when it's got nothing to do with this case.

THE COURT: You want to respond?

MR. WEDDLE: Yeah, it has everything to do with this case. I mean --

THE COURT: Well, well, wait a second before you draw that conclusion right off the bat. I mean the decision was made or you allege against the County, the County made the decision, correct?

MR. WEDDLE: Correct.

THE COURT: Okay. The State's Attorney's Office says there's an investigation. Whether it's "reasonable", whether it's fair, whether it's got something of merit or not, once the County's told this issue is under investigation or this person is under investigation, those documents are part of it, then why would it not just end there? For the County to come back and say this matter is under investigation --

MR. WEDDLE: Well, one, one the Cou -- Mr. Bright, the testimony's going to show that Mr. Bright read

the documents. Okay, he was provided the email. The email in Exhibit 7, he read them.

THE COURT: Okay.

MR. WEDDLE: He, he could see very clearly that for example on PI, PIA 9 Judge Michael was saying, is essentially telling Ms. Morral, I don't have a case. Okay, I don't have a case. I can't prove this. I can't prove this. You've got to go to the Circuit Court first. It completely undermines and debunks the fact that there is any reasonable investigation going on whatsoever.

The, to address the argument about, well the County's not, the County's not liable for what Judge Michael may have determined. I mean the fact of the matter is they are. They're the custodian of record. The caselaw says that they have the duty to analyze, if Mr. Holder's a person of interest, which he is, that's what they're denial says. They have to analyze every document that they're going to withhold. They haven't done that. And if they're going to rely upon the, what I call the flimsy defense that there's an ongoing investigation, if that's wrong then they have to bear the consequences of that.

I mean it simp, it simply cannot be where the County can just say, you know, you know, we're not going to do anything further. If, if there in fact is a un --

if there was no investigation, if the investigation was unreasonable, then someone has to be liable and it's the County who is liable. Okay? The fact is Mr. Holder requested these documents from the County. They're in the County's possession. The State's attorney doesn't have -- they're not the custodian of records, the County is. So, all this about well the, the question would go under the State's Attorney's Office, no, the County is the custodian of the State's Attorney's records.

THE COURT: So, you're saying in essence that the County has to assess the value, the prosecutorial value or even investigative value of every matter that is subject of a PIA request that touches upon the State's Attorney's Office?

MR. WEDDLE: Well, this is -- I think this --

THE COURT: I -- can't, can't I rely on at least on the face of it? I mean it's like the County says, we're investigating this person for flying a balloon too high in a courtroom somewhere, you know, well that's pretty ridiculous on its face. But something that is at least reasonable on its face, doesn't the County have a right to rely upon that even if they're wrong, it's wrong? And then that's where it goes. And then frankly, that's one of the reasons I asked about the timing. You're talking about starting the investigation and then the

denial of records two months later.

MR. WEDDLE: The County has to rely, they can rely or not. They can look into it or not, but if they rely they do so at their own detriment. And the County has the burden to show, let's not forget this, the County has the burden to show that the denial was proper. Okay, the County is saying, well, you know, Mr. Bright inquired of, of Judge Michael and Judge Michael said, "Ongoing investigation". Okay, well then, we have -- we're going to try to show that that was done reasonable and that there was no ongoing investigation. I mean it's their burden to show that there was. We're contending there's not. So, we have a chance to put on, we have to have a chance to put on our defense.

THE COURT: Their burden to show what? That it's a valid investigation or reasonable investigation?

MR. WEDDLE: Both.

THE COURT: On every request that might be direct to the State's Attorney's Office for documents under the PIA?

MR. WEDDLE: Yes. I mean that's what the law says. I mean --

THE COURT: Objection's sustained. Unless you want to point out the language of the statute that says that Mr. Karpinski's wrong on this issue and that you are

right. Or one or the other.

MR. WEDDLE: Well, Your Honor, if I may, for example, the Frederick versus Randall case that the defendants have cited in their various briefs states for example that under former, under State -- it was, this statute was codified in the States and Government Article at former States, State Government Article 10-618 (a)(2). A custodian has a duty and an obligation if there is an ongoing investigation to make a particular showing as every document withheld is necessary. Again, it's their burden. This, the whole PIA statute, we have to recognize the framework in which this case is governed under. The entire PIA statute is governed toward disclosure. So, yes, it is our contention that if the, if the County wants to take a position that they relied upon Judge Michael's decision, they have, they have to, if he's wrong then they have to bear the burden. They have the burden to look behind it. Especially here when Mr. Holder has made multiple requests.

THE COURT: How many -- do you know, and perhaps through discovery how many documents you're talking about on this investigation to this misdemeanor?

MR. WEDDLE: I'm sorry, Your Honor, what was --

THE COURT: The investigation, how many documents are related to it? You're saying they have to go in

essence through every document.

MR. WEDDLE: Well --

THE COURT: Have you gotten those documents in discovery?

MR. WEDDLE: Well, that, that's an interesting point. The answer is, we didn't get those documents and we didn't know how many there were until this suit was filed.

THE COURT: Okay.

MR. WEDDLE: Okay, so we --

THE COURT: The question is in the present though. Now.

MR. WEDDLE: Well --

THE COURT: How many documents are you talking about?

MR. WEDDLE: -- in um, on August 23, August 23rd or 31st of 2021 after the suit was, was pending, the defendants produced the documents that are contained in Plaintiff's Exhibit 7. They're -- we subsequently find out while the case was pending that there were 16 emails, those are the 16 emails between Judge Michael and Ms. Morral. When we filed suit, we didn't know about that. When we, when we -- when Mr. Holder made the request in August of 2020, he didn't know about that. They didn't tell him that. They didn't articulate a basis. They

didn't say we have 16 emails that we're withholding due to an ongoing investigation. They didn't say that we're denying these under 4-351(b).

THE COURT: Okay. But you have them now? Which ones --

MR. WEDDLE: I'm sorry?

THE COURT: Does that -- which, which -- you have them now?

MR. WEDDLE: Correct.

THE COURT: Which ones, if any, reflect at least on their face and perhaps from your argument more substantively that the investigation was unreasonable?

MR. WEDDLE: Yeah, we would, we would contend all of them but specifically, Your Honor, PIA 9 which is Exhibit 7, therein, you know, Judge Michael talks about the basic problem in this case as he sees it. When I say this case, I mean the DNR citations. He says the basic problem in this case in a criminal court is that if Mr. Holder has a recorded piece of paper that says he has a right of way to cross his neighbor's property whether it has been extinguished or not and whether it will win him a civil suit or not won't matter. He just has to generate a reasonable doubt as to whether he has a right or not. And the State has the burden of proving that he does not, which without a Circuit Court order showing that one of

the other parties has quieted title to the disputed property we can't do in a criminal court, and everybody walks out no better off.

He then, he then states that the State will help in any way that is appropriate. But a criminal court won't get rid of this problem because the District Court has no jurisdiction to determine disputed land rights. It can only enforce violations like destruction or trespass on rights that are recorded in the Circuit Court land records or result by the Circuit Court sitting in a court of equity.

Frankly, Your Honor, those words are astounding to me. I can't imagine any clearer words from a prosecutor that puts complete doubt in their case. He's saying basically I can't prevail in the District Court where these DNR citations are pending because I don't have a Circuit Court order saying, resolving who has superior right to the land. Whether it's the DNR or Mr. Holder. Okay? And that's, that's -- if anything is to be believed, the only investigation, the only pending charges could be, that could be at issue in this case are the DNR charges. Those are the only pending charges as of the date of -- as of June 26th, 2020, the date this email is written. There's only four DNR charges pending against Mr. Holder.

This stuff about Estes, and the phone calls about Estes, there were no charges pending against Mr. Holder at that time from Ben Estes. Those came, those came in December of 2020. There are no pending criminal charges related to Christine Morral. Mr. Holder's never been charged with relationship to Ms. Morral. So, the only thing these emails could be talking, could be talking about are the DNR charges.

THE WITNESS: No. I'm sorry.

MR. WEDDLE: Your Honor --

MR. KARPENSKI: Your Honor --

THE COURT: Go ahead.

MR. KARPENSKI: -- Judge Michael has --

THE COURT: Just real quick.

MR. KARPENSKI: Judge Michael has testified there were multiple matters under review by the State's Attorney's Office and what bas -- and what the Plaintiff's argument is, is that the County Attorney is supposed to go back behind the State's Attorney and determine the reasonableness of those investigations. Frankly, that's not the law. The Randall case stands for the proposition that in cases where the defendants are awaiting trial or whether criminal investigations are ongoing, the reason why it is in the public interest to withhold the contents of the investigative file is obvious. Disclosure almost

always would interfere with a law enforcement proceeding, citing the Faulk case. And so, it, it -- by the way, it's not like Mr. Bright hid the ball regarding the reason why these, these documents weren't going to be produced, because Your Honor's going to have a letter to Mr. Holder dated August 4, the State's response. "Your request is denied. Pursuant to General Provision Article Section 4-351, a custodian may deny inspection by a person in interest, of records of investigations conducted by a State's Attorney. A State's Attorney's Office has advised that the records you have requested are in fact records of ongoing, of an ongoing investigation, involve current prosecution. Therefore, I must deny your request."

Now, I'm not quite frankly sure that the County's even the custodian of these documents.

THE COURT: Okay.

MR. KARPINSKI: They're on a County server, but that's about it.

THE COURT: Okay. Can you bring it to a close? Your argument I mean.

MR. KARPINSKI: I'm done, Your Honor.

THE COURT: Okay. I think we're still back at the objection. The objection is still sustained.

MR. WEDDLE: Your Honor, am I going to be able to inquire of the witness just to either move this, try to

move this along or not, about any of the communications in Plaintiff's Exhibit 7?

MR. KARPINSKI: My, my position is it's not relevant, Your Honor. It's not relevant to the issues before this Court.

THE COURT: Okay, I wasn't sure if 7 was a consent, okay.

MR. WEDDLE: I'm sorry?

THE COURT: What do you argue is the relevance of those? Briefly.

MR. WEDDLE: Again, the same, the same arguments that we had previously on the, the validity, the reasonableness of the investigation.

THE COURT: The objection to the exhibit is sustained. It's not admitted.

MR. WEDDLE: I'm sorry?

THE COURT: It's not admitted. The objection to the exhibit is sustained.

MR. WEDDLE: Seven, 7 there was no objection to the admission of it.

THE COURT: I believe there just was.

MR. KARPINSKI: Your Honor --

THE COURT: Am I misunderstanding?

MR. KARPINSKI: No, it has been admitted. But what I am objecting to and what I think Mr. Weddle's

asking the Court is whether he's going to be able to go page by page with Judge Michael and say well why did you think this related to an investigation? These are the documents that were produced ultimately in discovery with regard to the, to the August 4, 2020 PI, MPIA request. And I, again, this is -- to sit there and say on Page 9, Judge Michael, why did you think this would be relevant to an ongoing investigation? I don't think that's relevant to determine the reasonableness of what Mr. Bright and Mr. Downey and Washington County did.

THE COURT: Okay. Why don't you ask a question or two and we'll deal with that objection if it comes, Mr. Weddle?

THE CLERK: Sorry, Your Honor, Exhibit 7?

THE COURT: Seven I guess was admitted.

(The document marked as Petitioner's Exhibit No. 7 was received in evidence.)

MR. KARPINSKI: Seven, Your Honor, yes.

THE COURT: Yes.

THE CLERK: Seven was admitted?

THE COURT: Yes.

THE CLERK: Got you.

THE COURT: It was admitted. Mr. Weddle, in that regard do you have -- if you're going to say that there

was some hesitation I gather in the State's Attorney's Office about the validity of the charges? Is that part of what you're presenting?

MR. WEDDLE: Yes.

THE COURT: Do you have anything that shows that that was communicated to the County? On your request? Your client's request?

MR. WEDDLE: Well, yes, I do, Your Honor. Mr. Bright during his deposition testified that he read the documents with the exception, I believe of PIA response 1 and 2. But he read the six, the purported 16 emails between Judge Michael and Christine Morral prior to issuing the August denial.

So, Mr. -- it's our contention and it's -- Mr., Mr. Bright has admitted during his deposition that he read for example, PIA 9 which we contend shows very clearly that --

THE COURT: Okay, well if you want to get into something real quickly on what was communicated, or you contend was communicated to the County for the County to be on notice that this investigation was not for real or, or questionable or whatever you want to call it, unreasonable I guess.

BY MR. WEDDLE:

Q Judge Michael, as of August -- I'm sorry as of

June 26th, 2020 there was no, there were no criminal charges pending against Mr. Holder with respect to any activities conducted by Mr. Ben Estes, correct?

MR. KARPINSKI: Objection, relevance.

THE COURT: Okay, can you answer that question?

THE WITNESS: Yeah. It -- I was just waiting for your ruling on it.

THE COURT: Okay, overruled.

THE WITNESS: Okay.

THE COURT: Let's just hear the answer.

THE WITNESS: That it's precisely what was under investigation. Ben had already called me. And whether there were charges pending or not, I couldn't tell you when the charges were filed, but the investigation had started.

BY MR. WEDDLE:

Q Okay, and you were friends with Mr. Estes, correct?

A Yeah, yep.

Q And you've known him for approximately 20 years, is that correct?

A I would think, yeah, I mean I've been to his, been to his house when he lived on Main Street and lived with his dad, Dana (phonetic sp.). I never knew his late twin brother, but I know him, I know Ben very well. And

then when I -- they had Frog Hollow Farm I'd looked at that, when there had been a fire there I looked at that house for another, for a client before he bought it and then I visited him there to. Mr., you know, it was my -- Mr. Norris's property there on Mt. Everett Road.

Q And you, when Mr. Bright sent you the zip files that are at issue in Plaintiff's Exhibit 7, you didn't read those, did you?

A I can't recall reading them.

Q Okay.

A I know, you say it's a very, you know, I didn't have to read them to tell him that there is an ongoing investigation.

Q Did you make any effort to determine whether those 16 emails could be redacted and then produced to Mr. Holder?

MR. KARPINSKI: Objection.

THE COURT: Sustained.

BY MR. WEDDLE:

Q Did you make any determination whether any of those 16 emails could be severed and produced to Mr. Holder?

MR. KARPINSKI: Objection.

THE COURT: Overruled.

THE WITNESS: No, because the privilege was

absolutely -- he was entitled to, to in his -- in the open criminal case the criminal discovery under 4-263 and 263 or 262, whichever is the District Court rule and the balance of, of this, you know, the work product, my legal work product of an investigation at the State's Attorney's Office corresponded with potential witnesses etcetera.

BY MR. WEDDLE:

Q None of these documents were produced, in Plaintiff's Exhibit 7 were produced to Mr. Holder in the course of his discovery under either Rule 4-262 or 42-6 – 263, correct?

MR. KARPINSKI: Objection, relevance.

THE WITNESS: I don't, I don't --

THE COURT: Sustained.

THE WITNESS: Okay.

BY MR. WEDDLE:

Q Mr. Mich -- or Judge Michael, you I think earlier testified that you were receiving calls from other folks within the community regarding Mr. Holder, is that correct?

A The office was.

Q The office?

A I was just, you know, generally aware. We have a duty, duty person every day and, you know, there was, there were -- I, I can only personally recall talking to

Mr. -- to the DNR folks, Mr. Estes and Ms. Morral, Ms. Morral's attorney and all of the attorneys down at the Department of Natural Resources were the folks that I, I was dealing with. But it was, there was also simmering that I was aware of was, was some sort of peace order situation that could always, you know, are always ripe for further criminal prosecution. But I, I -- that's, that's what I, you know, it's more of an impression than, than, you know, exact names of who was calling whom. But other people in my office were fielding calls.

Q The peace order you spoke about, there were no criminal charges filed against Mr. Holder with respect to those, correct?

A Well I, I --

MR. KARPINSKI: Objection, relevance.

THE COURT: Sustained.

BY MR. WEDDLE:

Q Judge Michael, turning back to Plaintiff's Exhibit 7, specifically Holder PIA Response 9, how would producing that document interfere with any ongoing investigation that you were conducting?

MR. KARPINSKI: Objection, relevance, Your Honor.

THE COURT: Sustained.

BY MR. WEDDLE:

Q Judge Michael, if I can turn your attention to

Plaintiff's Exhibit 8 which is an email between you and Mary Ironside and Tally Kovacs dated October 1st, 2020. What is, who is Mary Ironside?

A I don't know. Somebody at DNR I thought. I don't know if she's a lawyer or a, you know, an official of some sort. And, and the Department, DNR, the Department of Natural Resources by recollection. I recognize those names, but --

Q Who was Tally Kovacs?

A I think -- one of them, I think they might have been lawyers or they're, you know, bureaucrats of some sort.

Q Focusing on Page 2 of Exhibit 8, Ms. Ironside told you that the State appraised the damage to Mr. Holder activities allegedly on the State property at about $500. Is that correct?

MR. KARPINSKI: Objection, relevance.

THE COURT: Sustained.

BY MR. WEDDLE:

Q And on Thursday, October 1st, 2020 you wrote to Ms. Ironside stating that this case has become burdensome for this office. Basically, the State's Attorney's Office will put in the position, will be put in the position of proving a quiet title action in District Court. "An action that I'm likely to lose because of lack of

expertise and resources. This will set a very bad precedent up and down the rail trail."

MR. KARPINSKI: Objection, relevance.

THE COURT: Sustained.

BY MR. WEDDLE:

Q And in this document, you also recognize that you would need to file a quiet title to the State land at issue in proceeding before, in proceeding before the District Court, correct?

MR. KARPINSKI: Objection, relevance.

THE COURT: Sustained. Mr. Weddle let's get to something that really is relevant. And this path is not frankly.

MR. WEDDLE: Your, Your Honor, respectfully, I'm just trying to make my record. I, I, I respect Your Honor --

THE COURT: Okay.

MR. WEDDLE: -- and I'm just, I respect Your Honor's ruling. We differ obviously on it.

THE COURT: Yeah, sure. And that's fine. Then in that case to make the record why don't you say exactly where you're going, what you'd like to establish and then your record will likely be made. Instead of going through question by question.

MR. WEDDLE: Again, Your Honor, I'm trying to

establish that the State: One, knew the infirmities of the DNR charges; two, told a number of people, Ms. Morral of that, Mr. Greivell of that, Ms. Kovacs and Ms. and Ms. Ironside of that. Again, this shows that there was no investigation happening with respect to the only charges at issue. During the denial of the, of Mr. Holder's PIA request which were made in August and October.

THE COURT: And within that proposed evidence, do you have a specific piece of evidence or pieces of evidence that show that the County was aware or was put on notice somehow directly -- or was put on evidence of the problems or however you phrase it with the charges?

MR. WEDDLE: Again, Your Honor, with the, the evidence that we have, well, the evidence that will come is that Mr. Bright read the emails and sent those to, sent those -- read those emails, sent those to Judge Michael. He was -- the County was on notice of those emails and Mr. Holder continued to make a number of requests for the same documents. Again, it should have aroused the suspicion of the County to look into this further and to continue to look into this. Again, this was not a one off --

THE COURT: Okay.

MR. WEDDLE: -- this was not a one off event.

THE COURT: You say that when Mr. Bright testifies if you can tie that together in reflecting that

there was a relevance and that Mr. Bright or the County Officials determining a response to the PIA knew or should have known at least that the charges were not reasonable then maybe we come back to this issue. But I don't believe you set a foundation up at this point for the Court to be ruling on these issues and these questions you've been asking as being relevant to the PIA request and denial. I should say. I know I've thrown you off your track on this, but we've got to keep moving.

BY MR. WEDDLE:

Q I, I understand, Your Honor. I'm trying to go through the outline here and --

THE COURT: Okay.

MR. WEDDLE: -- see if, unfortunately, you know, a lot of, a lot of the testimony that I had intended on going through, Your Honor has sustained objections on, so I don't want to waste the Court's time.

BY MR. WEDDLE:

Q Judge Michael, do you recall giving a deposition of case number C-21-CV-20-00430 on or about February 15, 2022? Do you recall that?

A No.

Q You don't recall giving a deposition?

A I recall giving several depositions, but I don't recall what, what the cases were about.

Q Okay. Do you recall the deposition where I believe you testified last week where Mr., Mr. Shapiro was sitting next to you during the deposition?

A I, I recall that one really well.

Q Okay.

A That's the one I can recall really well.

Q And I believe during that deposition, I believe you were at your home, were you not? You, you --

A No, that's not the one with Mr. Shapiro. The one with Mr. Shapiro is when your client was represented by counsel and wanted to talk to me and I told him, I'm not going to talk to him without a waiver of your lawyer. And I, and I answered the questions of the Natural Resources lawyers that were on the phone, but I wouldn't talk to your client because it would have been an ethical violation to talk to a represented defendant about the matters about which he was represented. He was represented by Mr. Harbin. Mr. Harbin hadn't given me his permission. So, I, after the, after the DNR lawyers asked a few questions, I think they were DNR lawyers I said goodbye to your client. That's the deposition that Mr. Shapiro was at. The one at my house Mr. Shapiro wasn't there. I think there was another one where Mr. Shapiro may have been there at the office. But I'm not sure. They were all, I think there were three. The one I

remember the most is the, because it was humorous.

Q During your deposition do you recall saying that, "As I have with everybody involved I encourage that whatever this dispute was, be it subject to a quite title action or boundary dispute action, I'm not versed in those kinds of things. But whatever you do in the Circuit Court to get boundary lines set." Do you recall that testimony?

MR. KARPINSKI: Objection, relevance.

THE COURT: I'll allow an answer to that and see if --

THE WITNESS: I don't specifically recall the testimony but that's, that's always been my position to your client, to Mr. Greivell, to the Department of Natural Resources that instead of trying these matters in the, in the District Court, or even the Circuit Court on a criminal basis because of the standard of proof and it was my impression that, that Mr. Holder and Mr. Greivell were baiting the State into, you know, having these matters tried in the District Court where the standard is so high and setting a precedent and, and, and, you know, checking one of the boxes on adverse possession that instead the right way to do it as I told Mr. Morral, Ms. Morral, as I told your client, as I told Mr. Greivell, as I told the DNR lawyers, hey go to the Circuit Court, court of equity and get this determined before we have the, have the

criminal case. Which is why these matters, as far as I know, continue to be under investigation and because, you know, until that were to happen.

Just like I told Ms. Morral, go up to the Circuit Court. Call your title insurance, you know, this guy's trying to threaten to tear down your fence and invade your property. Call your title insurer. I gave the same advice to, to Judge Pauler when she was, we worked in the same office, she had a similar dispute. I always, that's how, that's where I, you know, I learned that. You get it worked out. You get the, you get the, you know, that's why you have title insurance. So, that was always my position, and I was hoping that was going to happen before we had to try any cases that involved any boundaries. So, absolutely whether, I don't recall that specific testimony but that's what was going on for sure.

Q And you made the same representations to the County, correct?

MR. KARPINSKI: Objection.

THE WITNESS: No, the County wasn't involved.

MR. KARPINSKI: Excuse me, Your Honor. Objection is withdrawn.

THE WITNESS: I'm sorry.

THE COURT: Overruled. Overruled at this point.

MR. KAPRINSKI: Yes, it's withdrawn.

THE WITNESS: Yeah, no, the County wasn't involved. The County wasn't a party to it. This was the State, Ms. Morral, Mr. Estes and another guy like I don't know whether his name was Mr. Turner or something like that was further out towards Dog Street Road, and you had a -- Mr. Young, that was his name. Mr. Young and a variety of other, other property owners that your client was alleging that he had some kind of wagon road or easement or something like that and, you know, there's some, some kind of faint document that I can remember seeing, a handwritten document. I, I couldn't really make it out, but that was, you know -- I said, that could well be. But that's grist for the Circuit Court, not the District Court.

BY MR. WEDDLE:

Q You told Morral, you told Greivell, you told the DNR that everybody needs to go to the Circuit Court to work this out, right?

MR. KARPINSKI: Objection.

THE WITNESS: Well --

THE COURT: I'm going to sustain the objection.

MR. WEDDLE: Okay.

THE COURT: You know, just because another avenue might be advised or pursued, for instance this case to the extent that I understand it, the underlying case you're

talking about would have been, for example, prime candidate for mediation. You know, landowner dispute rather than a criminal prosecution. But what you're trying to establish as I hear is that there is some other avenue that's being suggested but that doesn't mean there, there's no investigation or another avenue such as criminal investigation, prosecution. So --

MR. WEDDLE: You --

THE COURT: -- sustain the objection.

BY MR. WEDDLE:

Q Judge Michael you, you never suggested the mediation of these disputes, did you?

MR. KARPINSKI: Objection, relevance, Your Honor.

THE WITNESS: I only --

MR. KARPINSKI: Objection.

THE WITNESS: I only referred to that as a possible response that would be parallel or in the box with a criminal investigation.

BY MR. WEDDLE:

Q Judge Michael, you remember speaking with Mr. Bright with respect to the, the documents at issue in Exhibit 7, correct?

A No.

Q I'm sorry?

A It's possible. I don't recall it.

Q Okay.

A It's possible I spoke to him, I don't recall. You're asking if I recall it and I don't.

Q Okay.

A I remember him emailing me and he may have talked to me on the phone too. I just, I just don't recall it.

Q Do you recall during your deposition stating that because it was time consuming and that you -- I'm sorry. Do you recall during your deposition stating that you refuse to look at the title documents that Mr. Greivell gave you because it was time consuming and I didn't want to, to do the Department of Natural Resource Attorney General's work?

MR. KARPINSKI: Objection, relevance. Your Honor, the witness already said that he had no communications with the County regarding any of this.

THE COURT: Did you have any communications with the County regarding it?

THE WITNESS: Not, not regarding the land dispute. The only communications I can recall in the County Government would be with, with Mr. Bright or Mr., Mr. Downey or anybody was, you know that, that you know this was a matter in that, in the, in our purview at the State's Attorney's Office and it was under investigation. It was the limit of it.

THE COURT: All right, I asked the question just to try to cut through some of this material and I find that objection moot at this point.

THE WITNESS: I, I can, I'll volunteer that there would be times where I would have conversations about other zoning disputes or problem people, but never, that was not Mr. Holder. That was another person out on Cool Hollow Road. I mean there were these several kind of gadflies that we just soaked up a lot of extra. And, and that's the kind of thing I would talk to the County about if there were County jurisdiction about a zoning issue. Which we would ultimately, sometimes we would enforce in the criminal court. But this didn't have anything to do with that. So no, there was no communications about the substance of this investigation.

BY MR. WEDDLE:

Q Did you ever tell the County, for example as you testified in your deposition that you weren't going to worry about this until there was a trial date and there was no trial date set ever while I was involved. And I didn't worry about it because we were in the middle of covid and there were major issues like people's freedom at the jail and their health that I was concentrating on?

A That's right. I was putting this off until there was a trial date because the, the, you know, the rules for

discovery say that the discovery is due before trial. So, anything that he was entitled to he would have gotten at that time and, you know, I really wasn't going to worry about it. That's, that's a true statement. I don't recall my testimony but that's certainly a true statement. So, the -- and that's why the investigation was continuing until the trial date or trial dates, because there were some other cases too. Ones I wasn't handling.

Q And you don't, you don't recall whether or not he got the discovery with respect to the DNR citations prior to the trial date, correct?

A He would have gotten, he would have gotten the discovery before the trial date. But, you know, what he would have gotten I don't specifically recall what he got. He wouldn't have gotten my correspondence with the DNR because that's work product. He wouldn't have gotten my correspondence with Ms. Morral, that's work product. He would have gotten his citations, photographs, the estimates, things like that. But he -- the documents you're talking about wouldn't have been discoverable because they're not, you know, statements of a witness or evidence to be used at trial.

THE COURT: Mr. Kirk, could you step up here briefly, just to the bench?

(Discussion off the record.)

THE COURT: Okay, all right. We can continue on.

MR. WEDDLE: I don't have any further questions.

MR. KARPINSKI: I just have one, Your Honor.

THE COURT: Okay.

MR. KARPINSKI: Just as a point of clarification.

REDIRECT EXAMINATION

BY MR. KARPINSKI:

Q Simply, Judge Michael you were asked, just Mr. Weddle just read a portion of apparently your deposition testimony where you made a comment something to the effect that you were going to hold off on the discovery. Because of covid there wasn't going to be a trial date. Do you remember those? That?

A Yeah, yeah.

Q Okay. It started off by saying, did you tell the County that and then sort of the, then the question followed. My question to you is, did you talk to the County, did you talk to Mr. Downey or Mr., or Mr. Bright about the status of any criminal cases involving Mr. Holder?

A I mean my statement to -- and I think I dealt with Andrew on this, my statement to him was always, I mean, this mess is still pending. It was always, you know, if I talked to you on the phone it would be a, it would probably been, been a conversation less than a

minute. And I'm not saying I did talk to him on the phone, because it could have been by email.

Q Mm-hm.

A But I was very consistent just as I've been here today. Because, because of the litigious nature of Mr. Holder and, and there's always some investigation ongoing about Mr. Holder, Mr. Holder, Mr. Estes, Ms. Morale, the whole thing. And that's, that's the communication I would have with, with Andrew I would say, it's still pending. And I think it was still pending when I left the office.

Q Thank you, thank you for your time, Your Honor.

THE COURT: You're, you're --

THE WITNESS: The other, the other thing is when I was looking at the exhibits that you showed me, I think they're the ones you showed me, I said to him, okay it's resolved because there was a global deal with Mr., with Dave Harbin and, and Kenny Shapiro and I think it took care of the DNR citations too. I don't know because it happened to involve Mr. Estes I wasn't involved. You can, you know, you can talk to Kenny. But I, I emailed Andrew and said, okay, it's resolved. And I emailed him back and said, wait a second hold the phone, it's not resolved because the, the -- I don't know all of the specifics of the deal, but one of the things, very strange, Mr. Holder waived that if he appealed that all of the cases would

come back. And so, he appealed so all the -- everything was going to be refiled. And that's the last I remember of it. And I told Andrew that because I thought okay, now it's over. The PIA issue is, you know, maybe it's ripe now. But then it, it all fell apart because he appealed and then it was in the investigative standpoint.

MR. KARPINSKI: Okay, thank you for your time.

MR. WEDDLE: Your --

THE WITNESS: That's a clarification of that.

MR. WEDDLE: Your Honor, a couple questions, redirect.

THE COURT: Briefly on recross?

MR. WEDDLE: Recross, excuse me.

RECROSS EXAMINATION

BY MR. WEDDLE:

Q You, you said that you, you talked to Mr. Bright and said this mess is still pending. But didn't you just testify if you spoke to Mr. Bright on the phone?

A I can't recall if I spoke to him, or I emailed him.

Q Okay, thank you.

A But that was the nature of my communication. Whether it was by phone or by email. A lot of times I think, almost anybody in the County knew the way to get my attention was to send me an email and I, I responded.

I'm, I'm looking at him because, you know, even as a judge if someone wants to get ahold of me, they send me an email. My phone never rings because I do almost everything by email. But it's possible during covid he called me. He called me at home or something like that.

Q But you don't recall that?

A No, it was --

Q Okay.

A -- communication of some sort.

Q Okay. Then you, you testified about some sort of deal that Mr. Holder struck. But you, you testified that you don't know about the deal, correct?

A I knew the deal happened and it was, he pled guilty to a count. The other counts were resolved and with this caveat, asterisk's that says, if he causes any trouble down there, meaning Keedysville, or he appeals, that everything comes back and he waived basically the jurisdictional barriers. That's what I recall about it. I don't recall anything more specific. I don't know which count he pled guilty to. I wasn't involved. I was just like, geez, I'm glad that's getting somewhere finally because it was a nuisance. And if I recall, I mean I never looked at any documents or anything like that. It was a conversation with Mr. Shapiro where I got that impression.

Q It was an impression? You don't know if it's true, correct?

A Well I know that it, I know that it fell apart because he appealed.

Q Okay, but the whole, you know, you don't know, you don't know the deal because you weren't involved, correct?

A I only know that there was a deal, and it was one count and it, and it took care of the shooting match supposedly and then there was an appeal and we're back in the investigative stage. That's what I know. Anything more specific than that I don't, I don't know. You know, I know the parties, Ben, Mr. Holder, maybe Ms. Morral was involved. Maybe Mr. Young was involved. I don't know what -- about that. And I think it took care of the DNR tickets too.

Q And the, the DNR tickets were resolved on July 15, 2021, correct?

A I, I have no idea. I don't, and I don't know that they are -- I don't know if they've ever been resolved.

Q Well they've been nol-prossed, haven't they?

A That may have happened, but I don't think that resolved it because he appealed that deal and the whole thing fell apart and the last I knew they were going to be

recharged.

Q But when you say you don't know the deal, you just said that you don't know the deal, correct?

A I just told you everything I know about a deal.

MR. KARPINSKI: Objection, asked and answered.

BY MR. WEDDLE:

Q After, after the --

THE COURT: Overruled given the quick answer.

BY MR. WEDDLE:

Q After the DNR charges were resolved on July 15th, you never --

A I don't, I don't agree with your, with your supposition. I don't think that they were resolved on that date.

Q They were dismissed on that case, correct?

A They, but they weren't resolved, that's just it. They -- he didn't stick to his deal. So, it wasn't resolved. I disagree with your predicate, sir.

Q Well, not to, not to beat the horse, you don't know the deal, correct?

MR. KARPINSKI: Objection.

THE COURT: Sustained, let's move on.

BY MR. WEDDLE:

Q After July 15, did you authorize release of the, of the emails at issue in Plaintiff's Exhibit 7?

A It's not my job to authorize or not authorize. What I communicated, and I think it's in an email and I was reminded of it, and I wouldn't have known other than the email that Mr. Karpinski showed me Thursday or Wednesday or Thursday, whatever day I was here that the, the resolution happened when Dave Harbin represented him and they, and whatever Mr. Shapiro did, the resolution happened in the District Court. And I told him, and I know this was by email because I see it, I saw it. And it says, the email says whatever ways. I let Andrew know that and then I was like, I think I said, hold the phone or something like that. It's a saying I say. I emailed him again, I said, deals off. It's back under investigation.

Q And between the 15, July 15th and the, the date that you wrote the hold the phone email --

A Yeah.

Q -- you do not authorize the release of the, of the emails that are in Plaintiff's Exhibit 7, correct?

A Again, I don't authorize or not authorize. I advise. I gave information. It was under investigation until it was, you know resolved. And then it was back under investigation when it, when it fell apart and it was back in prosecution. That's the information I gave. It wasn't an authorization to release. I don't know anything

about the PIA. I just tell them what's happening. I just tell them whether it's under investigation or not. Is this a criminal investigation? Or isn't it a criminal investigation? It stopped being and then it started being again. And I think it was in that status when I left the State's Attorney's Office. So, I guess that's why, I guess for that, for that little window it might not have been but ultimately it was.

Q And what was the, do you recall when the -- do you have any knowledge as to when the appealed count was resolved?

A No.

MR. KARPINSKI: Objection.

THE COURT: Overruled.

THE WITNESS: No, it's my impression that it was that it was still pending --

THE COURT: Well, let me, let me -- wait a second.

THE WITNESS: Sorry.

THE COURT: Are you objecting because of the implicit fact of it was resolved?

MR. KAPRINSKI: Yes, and it's beyond, it was beyond the scope of my questioning.

THE COURT: Well, I'm going to sustain the objection based primarily on it assumes a fact that has

not been established about the resolution or not aside from any relevance issue.

BY MR. WEDDLE:

Q Sir, is it your testimony that during the time when the, when the deal was struck on July 15th through the date of the appeal there was an ongoing investigation?

A Yes.

Q And Mr. Holder, is it your testimony he would not be entitled to those documents?

A Again, I'm no, I only say whether there's an investigation or not. There was a -- he was still under investigation because, you know, there was still this maelstrom of trouble in Keedysville that was not resolved.

Q And --

A That goes way beyond the charges. Because the, the, you know, the -- when we're fielding complaints that is an investigation, that's, that's what we do. You know, citizens call all the time. Mr. Holder, you know, came in contact the same. You know that's an investigation.

MR. WEDDLE: May I approach the witness, Your Honor, to look at an exhibit?

THE COURT: Yes.

BY MR. WEDDLE:

Q Judge, I think you just testified to sort of a hold the phone email --

A Yeah.

Q -- I think that you wrote?

A Yeah.

Q Dated July 27th, 2021. Is that correct?

A I think that you objected to its entry. But that's the one that reminded me of it, yeah. That's, that's, what's the date of it?

Q July 27th, 2021.

A Okay.

Q Do you want to look at it?

A No, I mean I, I, I, like I say I just look at those things and they kind of spur my memory about what happened more than reading it word for word.

Q And you say that Mr. Holder has appealed all the charges, all -- or I'm sorry. Mr. Holder has appealed, and all of the charges are going to be reinstated?

A Right, because that was the, that was the, that was the part of the deal I do know about is that he agreed that if he appealed, they would be all be charged. Because there's no jurisdiction in the Circuit Court for those citations and he had to waive it. That's what I recall about it being so strange.

Q And how long would the, the criminal investigation to the extent there was one, how long would that continue after those charges?

A Well, until the charges were resolved. Or, of those charges. Or just the calls stop coming in. The calls never stopped coming in. He never stopped having a problem with Ben and the neighbors. So, it never ended as when I left, he was, he was still causing trouble.

Q Thank you.

A Okay.

THE COURT: Okay.

THE WITNESS: All righty.

THE COURT: Can Judge Michael be excused?

MR. KARPINSKI: Yes, Your Honor.

THE WITNESS: Thank you.

THE COURT: Okay, you will not be recalled then in the trial? That's part of the question.

MR. KARPINSKI: That's correct. He's excused.

THE COURT: Thank you, thank you Judge.

THE WITNESS: Sure thing. What, what courtroom am I going to?

COURT REPORTER: Courtroom four.

THE WITNESS: All right, I'm on my way up, thank you. So long, bye everybody.

MR. WEDDLE: Thank you, Your Honor.

THE COURT: See you.

(Witness excused.)

THE COURT: Okay, next witness. Let me just say

at this point, given the time, is there, and do not be shy about it, is there anybody, one person that just needs to take a break, stretch, use the restroom or anything? You can come and go if you want too. Okay, then we'll continue on, and we'll break at the lunch break. If anybody between now and then needs a break just let me know and you'll get it, no questions asked.

MR. WEDDLE: Your Honor, I'm going to call Mr. Andrew Bright. Just need a moment to get sort of --

THE COURT: Okay, all right. Mr. Bright, you know the routine. You just stand up there and we'll swear you in.

MR. BRIGHT: Understood.

BENJAMIN ANDREW BRIGHT

called as a witness, produced on call of the defendant, first having been duly sworn according to law, was examined and testified as follows:

THE WITNESS: Yes, I do.

DIRECT EXAMINATION

BY MR. WEDDLE:

Q Mr. Bright, I'll try to do this without documents, I guess. Mr. Holder made a series of requests for the, the documents we've been talking about at issue in Plaintiff's Exhibit 7 on or about --

THE COURT: Okay, Mr. Bright, could you just tell

us your full name for the record?

MR. WEDDLE: I'm sorry.

THE WITNESS: Yes, my name is Benjamin Andrew Bright.

BY MR. WEDDLE:

Q And you're a licensed attorney to practice in Maryland. Is that correct?

A Yes, I am.

Q Okay, and you have been practicing law since 1991, is that right?

A Correct.

Q Okay. You had practiced in the private practice for a number of years and then I believe on or about June 28th, 2019, you came to the County. Is that correct?

A That's correct.

Q Okay, and your position as -- in the County Attorney's Office, is that right?

A That's correct.

Q What was your position there?

A Assistant County Attorney.

Q Okay, and sometime, at some point you left the Assistant County Attorney Office to become an attorney for the Washington County Sheriff's Office. Is that correct?

A That's correct.

Q Do you recall when that was?

A That was the first or second week of July 2021, around the Fourth of July holiday. I don't remember how many days after.

Q And you became acquainted with Mr. Holder after you began as the Assistant County -- at the County Attorney's Office, correct?

A I corresponded with him, correct.

Q Okay, and during your, your deposition do you recall, you recall taking your deposition I believe it was in September of 2022. Is that correct?

A I recall.

Q Okay, and during your deposition you testified that Mr. Holder made approximately 100 PIA requests. Is that correct?

A Well, as of the time I left the County Attorney's Office he had made approximately 100, I don't know exactly how many and it's my understanding that he's made more since that time.

Q Okay. You've been able to recall that because your legal assistant maintained a list of Mr. Holder's PIA requests, correct?

A That's correct.

Q Mr. Holder's the only person in all of Washington County for which your legal assistant, at that time, Ms. McCarty was tracking the number of requests, correct?

A I don't know that to be the case. I don't know.

MR. KARPINSKI: Your Honor, may I grab Mr. Bright's deposition transcript?

THE COURT: Yes, go ahead.

BY MR. WEDDLE:

Q "Mr. Bright, you don't know anyone else in Washington County for whom the County tracks how many PIA requests have been made, do you?"

MR. KARPINSKI: Objection, relevance.

THE COURT: I'm going to overrule the objection. I guess arguably it would go to bias, apparent upon the timeframe of when relevant issues have been and the knowledge of an excess, an excessive amount of PIA requests which could be the conclusion of 100 requests.

THE WITNESS: At the time I was working in the County Attorney's Office, I don't know of any other individual people that she was tracking the number of requests for. But I don't know that she wasn't, I just, I don't recall any other people that she needed to do that for.

BY MR. WEDDLE:

Q And why did she need to do that with Mr. Holder?

A Well, because we were receiving very frequent requests. Many of them overlapped each other. We needed to track compliance. We were admonished by Mr. Holder a

few times that if we had gone over time on a request or if he thought we were danger of going over time these overlapping requests were sometimes difficult to track because under the statute we had only a limited number of days to either acknowledge the request or to respond to it. And many of the requests reached into various departments of County Government and they were directed to, related to water and sewer. Some of them related to the Chief of Surveys. Just other, other departments. Many requests for emails that of course went to Mr. O'Neil. And so, it became a little bit confusing at times as to who we needed a response from within the County to comply with each request in turn.

Q You said it was confusing. Did you ever communicate that to Mr. Holder? That you were confused?

A Not that I recall.

Q Did you ever ask Mr. Holder to allow you an extension of the time period that you just described in responding to the PIA request?

A I may have but not that I recall.

Q Okay. During your deposition you told me it didn't matter how many PIA requests Mr. Holder made, correct?

A I don't remember if I said that it didn't matter. I don't remember what the context, context of the question

is.

Q On Page 41 of your deposition transcript I said, "Why does it, why does the number of Mr. Holder's PIA request matter?" And you says, you say, "Answer: It doesn't matter."

A If that's what I said, then that's what I said.

Q Okay. And you said, you testified at your deposition that "It doesn't matter as to the application of the law to any one request how many PIA requests an applicant makes," correct?

A I believe your question was --

MR. KARPINSKI: I'm going to object to the form of the question, Your Honor.

THE COURT: What is your form objection?

MR. KARPINSKI: Well, generally a deposition is used to refresh one's recollection as opposed to simply reading it as the question.

THE COURT: That's true.

MR. WEDDLE: He is a party, can't I just read it in?

THE COURT: Well, I mean you can read the deposition. But you're framing it in the sense of a question.

MR. WEDDLE: Okay, I'll --

THE COURT: To the witness.

BY MR. WEDDLE:

Q Okay, I -- on Page 41 Line 18, "So why were you guys keeping track of the number of them? Answer: Apparently, I wasn't keeping very good track because I wasn't sure how many there were. It must have been just a point of discussion. But it doesn't matter as to the application of the law to any one request."

A Well look if you're --

Q There's, there's no pending question.

A I apologize.

Q That's okay. Despite the fact that Mr. Holder may or may not have made more than 100 PIA requests you agree with me that he has every right to make PIA requests to the County, correct?

A He does have a right to make PIA requests to the County.

Q Okay.

A And I believe that may be why I said it doesn't matter in relationship to your earlier question, does his previous 100 questions affect the obligation of the Government to respond to his 100 first? No, it doesn't. But it definitely affects the ability of the Government to respond to each one in proper order because it taxes the resources of the office and of the County as a whole and it makes it difficult, honestly, just to keep track of

which ones have we complied with. Which ones have we not? So, does it affect the legal obligation, perhaps not. But if it -- does it affect the ability to respond, just physically with the staff that we had? Of course it does.

Q It attacks Mr. Holder's resources does it not, to, to make a hundred requests?

A I don't know what goes --

MR. KARPINSKI: Objection as to relevance.

THE COURT: Sustained.

BY MR. WEDDLE:

Q If you would simply, if the County would have simply responded and gave Mr. Holder the documents he requested, his number of requests would have been less, correct?

MR. KARPINSKI: Objection, relevance.

THE COURT: Sustained.

BY MR. WEDDLE:

Q Sir, are you aware, I'm sorry, strike that. You are aware, or are you not, that about three months prior to your deposition on June 7th, so on June 7th, 2020, the County filed a motion to stay prohibited, prohibit Mr. Holder's PIA request to Washington County. Are you aware of that?

MR. KARPINSKI: Objection, relevance.

THE COURT: What do you contend is the relevance?

MR. WEDDLE: Well, the relevance is the County filed a motion to, to ask the Court to stop enjoining Mr. Holder from making any other PIA requests. It goes to bias.

THE COURT: Mm-hm.

MR. WEDDLE: Frankly it's, it's, it's, it's it's a ridiculous, it's a ridiculous motion and it was not granted. It, it shows bias. I don't -- I want to ask --

THE COURT: Well, that's argument and, and one might conclude quite differently, but --

MR. WEDDLE: Well --

THE COURT: -- I'll give it the weight it deserves. I don't happen to think off hand right now that it goes to bias. I might go to reasonableness. I mean 100, 100 PIA requests? Okay.

THE WITNESS: On what date was that?

BY MR. WEDDLE:

Q June 7th, 2020.

A June 7th, 20 --

MR. HOLDER: 2022.

MR. WEDDLE:

Q Oh I'm sorry, excuse me. Thanks Justin. June 7th, 2022.

A Yeah, I was not aware that such a motion had been made because I was working out at the Sheriff's Office and

I, I really stopped tracking the business in the County Attorney's Office at that point in time.

Q Are you, are you aware of any other person with whom the County has filed a motion to stay or prohibit a person from filing any PIA requests?

MR. KARPINSKI: Objection.

THE COURT: Overruled.

THE WITNESS: During the time that I worked at the County Attorney's Office I, I don't recall any request or where that even would have been an issue.

MR. WEDDLE:

Q So, is the answer, no?

A I don't recall that ever having been done.

Q Now, you patterned your response to while you worked at the County's Office. What about in your current role at the Sheriff's Office?

A At the Sheriff's Office I have not encountered the need for such a motion to interfere or, or inhibit somebody's ability to make PIA requests. We receive plenty of PIA requests.

Q And no motion's ever been filed with respect to anyone, any other person's PIA request, correct?

A Not that I've been aware of.

Q Okay. Mr. Bright, during your deposition you testified that Mr. Holder is a person of interest with

respect to the documents at issue here, correct?

A To the extent that he is the person implicated or involved in those communications I suppose he could be a person of interest.

Q And you, you called him a person of interest in your denial letters, did you not? Dated August 4th and October 14th, 2020?

A I, I don't recall specifically using that expression. But if it's in that letter then I must have.

Q Okay.

MR. KARPINSKI: Your Honor I'm going to, if it's all right, grab the pleadings.

THE COURT: Sure.

MR. KARPINSKI: So, you're saying this motion was filed on July 7?

MR. WEDDLE: It was in the matter of Jeffrey Young verse Justin Miller.

MR. KARPINSKI: Okay, so it's clear for the record, Your Honor, the reason why I asked was because obviously, and my memory is not fantastic, but it's not failing either. I would have remembered filing such a motion if it were in this case. And what Mr. Weddle is referring to in terms of a motion to stay or something was in the Jeffrey Young case which is not even in this case in terms of the motion to stay PIA request. I, I don't, I

don't have a recollection --

THE COURT: So, so your point is that the motion to prevent further filings was from a third party unrelated to this case?

MR. KARPINSKI: Well, I'm not sure. Quite frankly so much gets filed, I don't really know. I, I do know I, I had moved to quash subpoenas that were issued, and that motion was granted in part and denied in part. And Mr. Bright was directed that he needed to testify, but that Mr. Downey and Mr. O'Neil did not need to testify. So, I just wanted to make it clear for the record that the line of questioning, I don't know what it, who filed it. Maybe I filed it. But it's not something that was filed in this case.

MR. WEDDLE: Your, Your Honor --

THE COURT: Okay.

MR. WEDDLE: -- just to clarify the record. I believe I read this in, but the, the, the motion, I believe the County filed the motion. I believe Mr. Karpinski's office, I don't have it in front of me, but I believe he filed it on behalf of the County, and it was filed in case number C-21-CV-20-000371 which is obviously not this case. But it's my representation to the Court that I, it is my understanding that Mr., Mr. Karpinski filed the motion on behalf of the County against Mr.

Holder. And, yes, and the motion was styled Motion to Stay Prohibit Justin Holder's MPIA Request to Washington County.

THE COURT: Okay. Do you need to respond or?

MR. KARPINSKI: I, I don't, Your Honor. I don't remember. I, I can't, I'm not, I can't make an accurate representation, Your Honor, about it. I mean Mr. Holder's got nine cases going on and to the extent someone filed something in my office, I can't say one way or the other if it was filed or not.

THE COURT: Okay.

BY MR. WEDDLE:

Q Mr., Mr. Bright, on August 3rd of 2020, Mr. Holder filed a request to provide all email correspondence from the following email address: Morral7@msn.com and any sheriff deputy, county official from May 19th to the present, correct?

A Yes, I believe he did that.

Q And you were tasked with handling that request, yes?

A That's correct.

Q Okay, and you, I think the testimony we heard earlier was you communicated with Josh O'Neil to run a, run a search for those records, correct?

A Yes, I did.

Q Okay. And you didn't instruct Mr. O'Neil with any search terms to use, did you?

A No, I believe I forwarded him the actual request and my recollection is that I asked him to make the search broad because I was a little concerned about the terms "county official" which is to my knowledge not defined. And my concern was or could be communications with any employee of, of the County. I was also concerned at the time that although the request was for communications with the sheriff, a deputy or a County official that honestly the sheriff and the deputies are not County officials and as it turns out there were responses, responsive documents or arguably responsive documents communicating with the State's Attorney's Office and the State's Attorney is in fact not a County official and yet the emails were on the County server. So, that posed a bit of quandary.

Q Okay, and you're the custodian, you're a custodian of the, the County servers, correct?

A My boss, Kirk Downey, is the custodian of County records and I think that begs the question is --

Q Sir, it's a yes or no question.

A No, it's not a yes or no question, Mr. Weddle.

Q It, it is. It is.

THE COURT: Well, if he can't answer it yes or no, he's got to give the most truthful answer he can. If

it goes beyond the inquiry, fair challenge to the answer. But not every question is a yes or no answer. So, if it can't be answered with a yes or no answer then either accept that or withdraw the question. Or let him answer more in full and then I can determine whether the answer should be stricken.

BY MR. WEDDLE:

Q Were you finished answering?

A Not really. I think your question was, was I a custodian of County records? And I was not the custodian of anything. My boss at the time, Kirk Downey, was in fact the custodian of County records. Whether these records requested are in fact County records I believe is an entirely different inquiry.

Q But the, the emails with the State's Attorney's Office were on servers maintained by the County, correct?

A They were stored on servers maintained by the County.

Q And Josh O'Neil a County employee was able to access and pull up those records, yes?

A He was able to retrieve them. That is correct.

Q Thank you. And Mr. O'Neil provided you with a zip file of 16 emails after you requested them, yes?

A Correct.

Q After receiving the zip file of 16 emails from

Mr. O'Neil, you sent those emails to Judge Michael, correct?

A That's correct. At the time Deputy State's Attorney Joe Michael, yes.

Q And you called Judge Michael to discuss the emails, correct?

A I did call him on the phone, yes.

Q Okay, and during the call, what did he tell you during the call?

A He told me that there were in fact open investigations and/or prosecutions of Mr. Holder and I believe others, but I don't recall exactly who all he elaborated. And I asked him if he would confirm that in a responsive email to me so that I could I guess memorialize in some way the fact that we had discussed it and that I had sought his input.

Q During your call with Judge Michael, he didn't tell you how many law enforcement proceedings were pending against Mr. Holder, correct?

MR. KARPINSKI: Objection, relevance.

THE COURT: Overruled.

THE WITNESS: I believe he said some words to the effect and I'm not attempting to quote him, but I believe he told me some words to the effect that Mr. Holder was in various conflicts with multiple people in the south County

area.

THE COURT: Just to make it clear, by overruling that objection was not, if it's a hearsay objection despite the hearsay the fact that it could go to knowledge on the part of the witness. I should say notice to the witness.

BY MR. WEDDLE:

Q During, during your call with Judge Michael he didn't, he did not tell you what, if any, law enforcement proceedings the records purportedly pertained to correct?

A He told me that those communications pertained to some law enforcement investigations, I believe were his words, surrounding Mr. Holder. He did not attempt to explain to me, nor did I ask him exactly how the emails applied to each and every investigation or each and every prosecution.

Q He told you that the -- strike that. Let me go back. You made no independent verification of any law enforcement proceedings pending against Mr. Holder as of August 3rd, 2020, correct?

A No, I was the Assistant County Attorney. We handle civil matters. I advised the County Commissioners and others in County Government as to what they should do in civil matters. And I did not have the authority, nor frankly the inclination, but certainly not the authority

to conduct an independent investigation of the sheriff or the State's Attorney.

Q You've read the emails, is that correct?

A I read through them. I don't know that I studied them in any great detail. But I did read through them and ascertain that they were emails from Ms. Morral to Joseph Michael in his role as Deputy County -- or Deputy State's Attorney which is why I directed the inquiry to him.

Q And you read the, the email PIA 9 which talks about the, the problem about the criminal case, correct?

MR. KARPINSKI: Objection, relevance, Your Honor.

THE COURT: Overruled. Did you --

THE WITNESS: I did read through the emails --

THE COURT: Okay.

THE WITNESS: -- and I do recall there being some discussion about contacting a title attorney or a title insurance provider. And I do recall there being some discussion about whether a quiet title action or something of that nature would establish an element, an element of the crime perhaps.

THE COURT: The answer does not necessarily accept the premise of the question which is fine. But let's, let's move on.

BY MR. WEDDLE:

Q You testified that you, you discussed whether a

quiet title action would, would have a bearing on the investigation, is that correct?

A I, I think I remember reading something in those emails somewhere that perhaps a quiet title action would be an element that would help help in prosecuting the criminal matter. That was my recollection of it. I remember, I do remember that Joe Michael advised Ms. Morral to contact her title insurance company. And I, I assumed that it was for that purpose.

Q And Judge Michael discussed with you, did he not, that the District Court was, was not able to resolve this action without a quiet title action being filed, correct?

A I do not believe Joe Michael told me that on the phone or by email. Joe Michael did discuss that there were other collateral problems and the conflicts between Mr. Holder and Ms. Morral, Mr. Holder and other people. I don't recall who all of them were. And whether a quiet title action would have related to those, I, I don't know how. It might have. I'm not sure because I wasn't privy to the prosecutorial file, and I didn't want to be privy to the prosecutorial file. That was beyond the scope of my job.

THE COURT: Twenty-four?

Q Yes. Sir, I'm handing you what's been marked as Plaintiff's Exhibit 24. Can you identify that document

for the record, please?

(The document referred to was marked as Plaintiff's Exhibit No. 24 for identification.)

A It appears to be a letter dated August 4, 2020 from me to Justin Holder, 25 Antietam Drive, Keedysville.

Q And you reference in this letter -- it's a denial and you reference General Provisions Article 4-351 as a basis for your denial, correct?

A That's correct.

Q You didn't cite any explicit provision of 4-351 upon which you based your denial, correct?

A I did not cite any subsection, that is correct.

Q Mr. Bright, during your deposition you testified that you did not know whether defendant's denial of Mr. Holder's request was mandatory, correct?

A I believe it's a discretionary denial. But if I said that I wasn't sure, then I'm sure that's what I said. I believe my testimony at the deposition was related to your question involving the phrase, "Therefore I must deny your request" at the end of the second inset paragraph and I believe I said at my deposition that -- where I said, "I must deny your request", it's perhaps permissible to leave out the word "must" and say I deny your request. I think I included the word "must" because I didn't want Mr.

Holder to believe that I was acting in some capricious or arbitrary fashion by denying the request. There was a basis for the denial.

Q But you acknowledge that it's not a mandatory, it's a permissive denial, correct?

A It's discretionary denial, that's correct.

Q Okay. Mr. Bright, is it your testimony that Mr., sorry, that Judge Michael instructed you to withhold from production all of the emails between Michael and Morral?

A He indicated to me that the release of those, the release of those emails would interfere with his office's investigation or prosecution of a criminal matter. And he indicated to me that, or he requested that I not disclose those emails.

Q He never wrote to you, I believe in the email back to you around that time on August 4, he never said that it would interfere, correct?

A My experience with Judge Michael is that he has --

Q Sir, it's a, it's a yes or no.

A He wrote in a very abbreviated fashion back to me, that is correct.

Q And it was, he did not use the phrase, "It would interfere with an ongoing investigation", correct?

A He did not use those phrases in his email, that's

correct.

Q And you've submitted a number of affidavits in this case, correct?

A At least, at least one or two, yes.

Q And in your first affidavit that you submitted, let's mark this. I apologize. Let me get my documents in order. I apologize.

THE COURT: Is it 25?

(The document referred to was marked as Plaintiff's Exhibit No. 25 for identification.)

THE CLERK: Yes, sir.

BY MR. WEDDLE:

Q Mr. Bright, I'm handing you what's been marked as Plaintiff's Exhibit 25, could you identify that please?

A It says Affidavit of B. Andrew Bright, Esquire and it's captioned in this case, case number ending in 97. It's dated April 20, 2021.

Q Okay, and in paragraph three you've said that you've been informed by the Deputy State's Attorney, that would be Joe Michael, correct?

A That's correct.

Q That "The records requested by Mr. Holder pertain to an open investigation being conducted by the State's Attorney's Office", right?

A That's what it says.

Q And you never said in this affidavit filed in the Court that it would interfere with any ongoing investigation. Is that correct?

A I don't --

MR. KARPINSKI: Objection, the document speaks for itself.

THE COURT: Well, he's asking, as I understand it, some other source of communication in that regard?

MR. WEDDLE: Well, I'm, I'm --

THE COURT: Can you ask that question again?

BY MR. WEDDLE:

Q Sure, in this, in this affidavit that you submitted on April 20th, 2021, you never state that Mr. Michael told you that the, that these doc -- releasing these documents would interfere with an ongoing investigation, correct?

THE COURT: Objection, sustained.

BY MR. WEDDLE:

Q And for the record, sir, you filed this affidavit, Plaintiff's Exhibit 25, in connection with the County's Motion for Summary Judgement filed in this case, right?

A I can't answer that for certain. I, I think I was asked by, or I provided the affidavit to Mr. Karpinski

and his office attached it to some pleading in this case. I don't know if it was that motion or not.

Q You're familiar with the pleadings in this case, are you not?

A Not as familiar with them as I would be if I were sitting in Mr. Karpinski's chair.

Q Okay. The motion for summary judgment filed in the spring of 2021 was denied, was it not?

MR. KARPINSKI: Objection.

THE COURT: What's the relevance of that?

MR. WEDDLE: I'll move on.

BY MR. WEDDLE:

Q Mr. Bright, to your knowledge, Mr. -- Judge Michael's never put it in writing to you that disclosing the records in Plaintiff's Exhibit 7 would interfere with an ongoing investigation, correct?

MR. KARPINSKI: Objection.

THE COURT: You said, Mr. who?

MR. WEDDLE: Judge Michael. Judge Michael never put it in writing to you that disclosing the records in the zip file which is Plaintiff's Exhibit 7 would interfere with an ongoing investigation, correct?

MR. KARPINSKI: Objection.

THE COURT: Well, overruled.

THE WITNESS: I'm not aware of him using that

phrase in writing, no.

BY MR. WEDDLE:

Q Okay. You never discussed with Judge Michael whether some, but not all of the emails that are in Plaintiff's Exhibit 7 could be segregated out and produced, correct?

A Is the question whether I discussed that with Judge Michael?

Q Yes.

A I don't recall. I do recall Judge Michael telling me that whatever, whatever discovery Mr. Holder would be entitled to in that case would be provided to Mr. Holder at whatever time was appropriate under the criminal rules of discovery. I do recall him telling me not to or requesting that I not release those emails period as a, to Mr. Holder or to others.

Q You never discussed with, I think you called him your boss, Mr. Downey, whether some but not all of the emails could be segregated out and produced, correct?

A No, Mr. Downey wouldn't have had any better basis to make a determination on that than I would have.

Q Okay.

A Mr. Downey wasn't privy to the prosecutorial records or files of any of the cases surrounding Mr. Holder. So, he would never have been able to answer that

question if I had asked him.

Q Okay. But again, you made no effort to look through those emails and determine whether or not any of those could be segregated and produced to Mr. Holder?

MR. KARPINSKI: Objection, asked and answered.

THE WITNESS: No.

THE COURT: Well, it's slightly different rephrased, overruled.

THE WITNESS: I was not involved in the prosecution of Mr. Holder. If you handed me any emails that, that were from or to Mr. Holder or the others involved in this conflict I would have no way of knowing whether they had an interplay with some other fact that had been turned over or, or investigated in the prosecution. So, there's no way that I would have had the, the broad basis of knowledge from being involved in the prosecution any more than if we handed a, a random email to you and asked if it had any bearing on some other prosecution. You, you would have no way of answering that question.

Q And the same question, instead of segregated but instead redacted. You never had any discussions with Mr. Michael whether or not some of the emails could be redacted and produced, correct?

A No, I never had any discussions with Mr. Michael

about, about any of that. I relied on Mr. Michael's advice on that matter.

Q Same question with respect to Mr. Downey. Did you discuss redaction with Mr. Downey?

A No, for all the same reasons that I just recited about, about severance. He could not have answered that question any better than I could have. It would have been pointless to ask him that question.

MR. KARPINSKI: Mr. Weddle, are you moving for admission of Exhibit 24?

MR. WEDDLE: 24 and 25.

MR. KARPINSKI: Okay, Your Honor, I have no objection to Exhibits 24 and 25 being introduced into evidence.

THE COURT: Okay, 24 and 25 are admitted.

(The documents marked as Plaintiff's Exhibit Nos. 24 and 25 were received in evidence.)

BY MR. WEDDLE:

Q Mr. Bright, I'm handing you what's been marked as Plaintiff's Exhibit 26. Can you identify this document for the record, please?

(The document referred to was marked as Plaintiff's Exhibit No. 26 for identification.)

A It appears to be an email chain involving Rachel McCarty the, at the time the legal assistant for the County Attorney's Office and Justin Holder. Well, and myself.

Q And is, is the back page of the Exhibit a letter from you dated October 15 of 2020 to Mr. Holder?

A Yes.

Q Okay, and you made the same denial to Mr. Holder as you had before, correct?

A That's correct.

Q Okay. Your Honor, I move Plaintiff's Exhibit 26.

MR. KARPINSKI: No objection, Your Honor.

THE COURT: 26 is admitted.

(The document marked as Plaintiff's Exhibit No. 26 was received in evidence.)

THE WITNESS: If I can correct slightly my answer to your question. You said it was the same --

MR. WEDDLE: No, sir, there's no pending question. Remove on hearing.

THE COURT: I'm sorry, did you want to clarify your answer to a past question?

THE WITNESS: Well, I mean he asked if I made the same denial and I, I made a denial based on the same basis I think I recited here that there was a still ongoing

investigation. So, I think I modified the wording of the denial to that extent.

BY MR. WEDDLE:

Q Okay.

A But it's on the same basis, that's true.

Q And, and -- I'll move on. Mr. Bright, did you ever discuss Mr. Holder's request with Kenny Shapiro?

A No, not that I recall.

Q And who, I don't know if this is clear to, to His Honor. Who is Kenny Shapiro?

A Kenny Shapiro to the best of my knowledge is an Assistant State's Attorney. At that time, I'm pretty sure he was an Assistant State's Attorney in the State's Attorney Office. I don't know whether his title has been elevated to some other position, Deputy, or what have you in the intervening time. I just don't know the answer to that question.

Q And it's your understanding that he, he was, he took over the case, the criminal cases from Judge Michael, correct?

MR. KARPINSKI: Objection, relevance.

THE COURT: Overruled at this point.

THE WITNESS: That's my understanding based upon the testimony I heard Judge Michael giving in this case. At that time, I, I don't know that I knew whether Kenny

Shapiro was the prosecutor or not. I, I don't know the answer to that. To the best of my recollection all of the communication I had was with Judge Joe Michael.

BY MR. WEDDLE:

Q Mr. Bright, if I could, if I could ask you to find within this (unintelligible) of papers up here --

A Mm-hm.

Q -- Plaintiff's 7? I think that's it.

A I'm trying to keep these in order. That's 24, 25 and 26.

Q Now, I'm going to point your attention to the document labeled PIA Holder 1. And this is a June 24th, 2020 email between Christine Morral and the Town of Keedysville and DMullendore@washco-md.net and RWilkinson@washco-md.net, correct?

A That's the first page of the exhibit here.

Q Okay, and who is -- do you recognize the email address DMullendore@Washco?

A Yes, that's Douglas Mullendore, the former Sheriff of Washington County.

Q Okay. And do you recognize the email address RWilkinson?

A Yes, that's Randy Wilkinson. He was the former Chief Deputy Colonel at the Sheriff's Office.

Q Okay. This email was sent, I'm sorry. This

email was responsive to Mr. Holder's request to please provide all email correspondences from the following email address, morral7@msn.com and any Sheriff Deputy, County Official from May 19th to the present, correct?

A It is an email from morral7 to a sheriff and a deputy sheriff, yes.

Q Okay. So, it would be responsive to that request, yes?

A Again, I think we could get into the theoretical argument about was it a County record? Is the County answerable for it? It, and it turned back up in response to Josh O'Neil's search.

Q Thank you. And that's where I was going. Uh, this what I'll call the Morral-Town of Keedysville email, which is the subject of Count Two, was not one of the 16 emails found by Josh O'Neil's search and transmitted to you in the zip file on August 3rd, 2020 at 4:16 p.m., was it?

MR. KARPINSKI: Objection as to form.

THE COURT: Form as to leading his witness?

MR. KARPINSKI: Yes.

THE COURT: Okay. A witness's status as a hostile witness has not been established. So, if you can go back to non-leading questions. If, if --

MR. WEDDLE: Your Honor, my recollection of Rule,

I think it's 5-611 it's not perfect, but isn't a hostile witness an adverse party as well?

THE COURT: I don't believe by definition an adverse party is an adverse witness. You want to show me something? I can be educated but I do not believe it's automatic.

MR. WEDDLE: Well, Your Honor, I'm -- I don't perceive to be able to educate you but I'm going to --

THE COURT: No, you would be because --

MR. WEDDLE: Well, let me --

THE COURT: -- everybody can learn, continue to learn.

MR. WEDDLE: Well, I'll take a look at the Rule while we have a second.

THE COURT: Unless I could have assistance from this table. Is there a concession about an adverse party as a hostile witness by definition?

MR. KARPINSKI: Well, I -- no, I believe Your Honor is correct. Just because you're an adverse party does not make you a hostile witness.

THE COURT: Okay. Then we'll both be educated if we're wrong.

MR. KARPINSKI: Yes, that is correct.

MR. WEDDLE: 5-611(c)(2), I'm sorry, (c), it says, "Ordinarily, leading questions should be allowed on

cross examination or on direct examination of a hostile witness, an adverse party or a witness identified with an adverse party." Mr. Bright I would suggest is an adverse party because he is a defendant and Mr. Holder is the plaintiff.

THE COURT: Okay. Is Mr. Bright among the parties listed? I mean I've got a --

MR. KARPINSKI: Yes, yes, Your Honor. Yes, yes, he is. Objection withdrawn.

THE COURT: Okay, more educated. Thank you.

BY MR. WEDDLE:

Q Okay. Let me see if I can remember the question now.

THE COURT: It was leading, so that might help.

BY MR. WEDDLE:

Q The, this Town of Keedysville email that I referred to out of the Keedysville emails number one and two in the subject of Count Two, that email was not one of the 16 emails found by Josh O'Neil's search and transmitted to you in the zip file on August 3rd, 2020 at 4:16 p.m., was it?

A I do not recall it being included in the zip file. The only thing I remember being in the zip file was the -- were the emails between Ms. Morral and Deputy State's Attorney Joe Michael.

Q Right, and that's what you indicated in your, in your email correspondence to Judge Michael, correct?

A That's my recollection, yes.

Q And this email wasn't transmitted to Judge Michael, is that correct?

A As far as I know I only transmitted to Joe Michael the 16 emails that were his emails.

Q Okay.

A Or emails that had originally be directed to him.

Q And this email would not have been one described by you as pertaining to an open investigation being conducted by the State's Attorney's Office, correct?

A I don't know that I was aware of it at the time, you know, in August of 2020 when I wrote that letter. So, I don't think it could have been referenced by me. Was it involved in a prosecution? I have no idea. I wasn't the prosecutor. I have no idea whether it pertains to that.

Q Obviously, well maybe not obviously but this Morral-Town of Keedysville email which is the first and the second page of Exhibit 7 was never produced to Mr. Holder in response to his request dated August 3rd, 2020, correct?

A Not while I was Assistant County Attorney. Whether it's been produced since then I have no idea.

Q Okay, but it wasn't produced on August 3rd, 2020

when you --

A On August 3rd it was not produced, that's true.

Q Okay, and it wasn't produced on or about October 14th, 2020, correct? When he made his second request for these documents?

A Well, no and I, we could get into the discussion, does it even fall within the parameter? Is it responsive to his request? He asked for things that were to a county official, sheriff or deputy sheriff. This is written to somebody at Town Hall in Keedysville, Maryland. It looks like it copies the sheriff.

Q Well, you'll agree with me that if, if Christine Morral is writing the sheriff on a cc, that's to the sheriff, correct?

A Well, I don't know. The email says to Town Hall and copied to the sheriff. Or cc sheriff. I'm not sure, it's not addressed to the sheriff. But again, I, I didn't, I did not have this email in front of me when I wrote the response to Mr. Holder denying the, denying his request.

Q Have you ever --

A To the best of my recollection.

Q You're familiar with the way email works, correct?

A I beg your pardon?

Q You're familiar with the way email works, correct?

A I send and receive some. I don't know that I know all of the finer points of how they work, no.

Q Well, you've written an email to someone and cc'd another individual on an email, correct?

A I, yes.

Q And that --

A Letters as well.

Q I'm sorry?

A And letters as well.

Q And when you're doing that, you're writing an email to the person you're cc'ing, correct?

MR. KARPINSKI: Objection.

THE WITNESS: I --

THE COURT: It's overruled.

THE WITNESS: I don't, yeah, I don't -- we could get into finer points. I wasn't trying to play finer points of semantics when I wrote the denial. This email was not provided to me by the Director of Information Technologies when I, in good faith, tried to obtain the Counties records that were responsive to Mr. Holder's request. So, I was unaware of that letter when I wrote the denial.

BY MR. WEDDLE:

Q Do you know where it came from? How the County obtained it?

A No, I don't know.

Q It was obtained, it wasn't obtained during your tenure with the County? With the County's Attorney's Office, correct?

A May be why I don't know. But I don't know.

Q Okay. Mr. Holder made another request for these same emails on January 21, 2021, correct?

A Yes.

Q And this Morral-Town of Keedysville email that we're talking about, that was never produced to Mr. Holder in response to his request dated January 21st, 2021, right?

A Not to my recollection or knowledge.

Q And this Morral-Town of Keedysville email was never mentioned in any email correspondence that you wrote to Mr. Holder, correct?

A I'm sorry, can you restate the question?

Q Sure, let me, let me take one step back. You recall sending a number of emails to Mr. Holder in response to his various PIA requests, correct?

A I sent a lot of records to Mr. Holder in response to PIA requests.

Q I'm speaking just about emails. You, you've

corresponded with Mr. Holder, via email in response to his PIA requests, correct?

A I have done so, yes.

Q Okay, and in, in your email correspondence with him the Morral-Town of Keedysville email that is at Plaintiff's 7 that was never, you never mentioned that in any of your email correspondence, correct?

A I have no idea whether I did or not. I, I had replied to nearly 100 give or take by the time I left the County Attorney's Office, and they covered a very broad range of topics and materials.

Q This email was never mentioned in any affidavit you filed in this case, correct?

A Not that I'm aware of or recall.

Q And this email was never mentioned in any pleading that was filed by you or the County in this Court, correct?

MR. KARPINSKI: Objection.

THE COURT: Overruled. If you can answer it?

THE WITNESS: I'm not aware of it's, whether it's been referenced in any pleading or not.

BY MR. WEDDLE:

Q And this Morral-Town of Keedysville email would not have been withheld from production under GP 4-351, correct?

A Well, I don't know the answer to that question. Again, I'm, I'm not a law enforcement official, or officer. I'm not a State's Attorney. Whether this was an investigatory record, whether the fact that Ms. Morral was apparently complaining about some kind of behavior on the part of Mr. Holder, does that have some relationship to a criminal prosecution? I have no idea.

Q Okay. I asked you during your deposition at Page 138, Line 5, "This document --" which I was referring to the Morral-Town of Keedysville email, "This document wouldn't have been held from production under GP 4-351, correct?" Mr. Karpinski said, "Objection." And then you responded, "I have no reason to think that it would." Right?

A Well, I have no reason to know one way or the other, Mr. Weddle. I am, I do not work, nor do I want to work for the State's Attorney's Office. I do work for the Sheriff's Office, but not in any kind of a criminal prosecution. I'm not involved in criminal prosecutions. That's not my role. And so, when, when the County finds itself in possession of records that pertain to some other agency the only way I have to figure out, okay, does this have any bearing on a, on a, is it an investigatory record within the meaning of General Provisions Article, 4-351? I have to rely on the expertise of the people who are

involved in those prosecutions.

Q But you didn't rely on any expertise in this, with respect to this document, correct?

A Well, I wasn't aware of the existence of that document when I responded to the request.

Q Thank you.

A I did an examination as best I could by contacting the only person I knew who had, in County Government, who had position and access to the records that your client was asking for.

THE COURT: Mr. Weddle, do you have a sense of how much more time you might have? I'm just thinking it's about the mid-day break. We can continue on a little bit if you're just about done. Otherwise, we'll recess at this point.

MR. WEDDLE: Yeah, we can recess now. That will give me a --

THE COURT: Okay.

MR. WEDDLE: -- maybe an opportunity to circle the wagons here and --

THE COURT: All righty, okay, so how about getting back together at 1:05?

THE BAILIFF: All rise.

(Recess)

THE COURT: You may have a seat. Okay, anything

before we resume?

MR. WEDDLE: No, Your Honor.

THE COURT: Okay, all right. Recalling the case of Holder versus Washington County, C-21-CV-21-097. Okay.

DIRECT EXAMINATION (CONTINUED)

BY MR. WEDDLE:

Q Mr. Bright, you know a person named, Barry, Barry J. Levey, correct?

A Yes, I do.

Q And Mr. Levey is the Public Safety Assistant Manager for Washington County, Maryland. Is that correct?

A I didn't know his official title. I knew him as the IT guy at the Sheriff's Office.

Q And during your deposition you described him as an expert on technology matters, correct?

A I -- he's employed in the field of technology matters for the Sheriff. So, I suspect he's an expert.

Q Okay. Pointing your attention to Plaintiff's Exhibit 2 which is in the stack in front of you there.

A Okay.

Q This is a letter that you wrote in response to Mr. Holder's PIA request of June 15th seeking all emails between the email address of blevey@washco-md.net for the past three years. Please respond in ten days with a time and costs, correct?

A That, that's the quotation from the --

Q Right.

A -- request itself, yes.

Q And you wrote this response, yes?

A Yes, I did.

Q Okay, and you after receiving this response you asked Mr. O'Neil, who is the Director of Information Systems to run a search, correct?

A Yes, I did.

Q Okay, and what did you ask Mr. O'Neil to search?

A To the best of my recollection I asked him to produce all emails between the email address blevey@washingtoncounty-md.net for the past three, three years.

Q Okay, both in Mr. Levey's inbox and sent box, is that correct?

A I don't know exactly how I worded my request to Mr. O'Neil unless I, you know, without, you know, having looked at the request. My typical practice would have been to ask it very much the way the request was worded.

Q Okay. And Mr. Levey's email account over the course of three years, there were 45,239 emails, correct?

A That's, that's what I reported in the letter. I assume that's correct. I couldn't have, couldn't have imagined that number on my own, I'm sure.

Q Mr. Bright, isn't it true that in response to that Mr. O'Neil sent you both, sent you and Mr. Downey the results of Mr. Holder's request to the County that's comprised in Plaintiff's Exhibit 2?

A Um, I don't know whether Mr. O'Neil's response was directed to me and Mr. Downey. Or, one, the other, or both. I don't recall specifically. But I know he responded to at least one of us and maybe two of us that that was the number of emails.

Q Right, but I'm, my question's a little different.

A Oh.

Q He sent you the result. Did he send you the results of the, of the search? The 45,239 emails?

A Yes, he did by email as I recall.

Q Okay, and --

A I think he also reported to me the number of gigabits or whatever unit of measurement of space that, that those occupied as well.

Q And where'd you save that, excuse me, where'd you save that file?

A Let me rephrase my answer because it's obvious I've been misunderstood. He sent me back the number of emails and he sent me in his email a report of the number of gigabits space that the, these emails occupied. But he did not send me the actual emails. And I, if, if I

implied otherwise, I misunderstood your question just now. He reported to me the number of emails and reported to me how much gigabit space they occupied on the disk, and he did not send me a copy of any of those emails.

Q So, you did not save the, a copy of the emails, the results we'll call them? The actual results? Whether -- in gigabits. You did not save that anywhere on the County's network?

A I didn't receive it, so I certainly did not save it.

Q And do you know what, if anything, Mr. O'Neil did with the, the search results? Those 45,239 emails?

A No, I don't.

Q Is it not the County's practice to, while you're employed there, to save the results of MPIA requests for at least two years?

A I, I don't know whether that's a policy anywhere. When I saw the number of emails that came up in, in response to the search, I think we quoted a few to Mr. Holder and I don't know of any policy that saves that for two years. If there is one, I'm not aware of it.

Q Did you save any other -- take, taking this request off the table for a moment.

A I understand.

Q Other requests made by other PIA requestors, did

you save the results of those requests while working at the County?

A Um, sometimes I did, I guess if there was a, for example, the 16 emails that popped up to then Mr. Michael. I'm sure those were saved probably on my hard drive at my office computer and I, I don't know if they were saved anywhere else or not. They might have been on a jump drive or something, a USB drive. I'm not sure. So, sometimes, yes, they would be saved.

Q Your testimony was with respect to the 45,239 emails Mr. O'Neil did not send you either the file or a link to the file. Is that your testimony?

A That is my testimony. I don't think he did.

Q In this letter that's Plaintiff's Exhibit 2, I think you just referenced a deposit. You, you advised Mr. Holder that, "The cost of review and duplication of these emails which are not exempt from production is estimated at $10,000," correct?

A That's correct.

Q Okay, and you advised Mr. Holder that he would need to pay one half of the estimate in order to commence the search and retrieval of those records, correct?

A That's what the letter says, yes.

Q You'd already had commenced the search and retrieval, correct?

A Well, I had asked Mr. O'Neil to conduct the search. As I said, I don't believe that those emails were, they were at least not retrieved to my office. But they existed and he identified them on the County's server.

Q Okay, but you were requesting Mr. Holder provide you $5,000 to search and retrieve them, correct?

A Well, I said that there. The, the process of the PIA response is that the documents for the records would need to be searched and retrieved. They would also have to be reviewed individually to redact any material that is not producible under the PIA either because of a mandatory denial or a permissive denial, or a discretionary denial. So, yes, I used the words search and retrieval of these records, but honestly the process involves way more than search and retrieval.

Q You agree with me that Mr. Holder could have taken several months to save up the $5,000 for the, the, the deposit fee, correct?

MR. KARPINSKI: Objection, relevance.

THE WITNESS: I have --

THE COURT: Sustained.

BY MR. WEDDLE:

Q Let's say Mr. Holder on August 1st came to the County with a check for $5,000, the one half deposit fee,

I'm sorry, the deposit fee, which is one half of the production. If the County didn't preserve the search results, how could it then turn those over to him?

MR. KARPINSKI: Objection.

THE COURT: Overruled.

THE WITNESS: It's my understanding at the time that I wrote the letter that, that those emails existed on an email server within the County and if he had appeared with a check during some reasonable period I don't, I wouldn't have had any reason to think that they would have disappeared or evaporated in that time.

BY MR. WEDDLE:

Q But for Mr. Levey's testimony that he deletes emails, correct?

A I did not consult with Mr. Levey to find out his deletion process.

Q Okay, what, what is a reasonable period of time Mr. Holder could have come back to you with a check to retre -- to gain access to these emails?

MR. KARPINSKI: Objection.

MR. WEDDLE: Your Honor, he just testified to the reasonableness of a period of time, I'm proving that --

THE COURT: Well, why don't you get specific about it, you know? Like, a reasonable period of time is real subjective. So, I think if you could ask him if

there was a specific timeframe or what the range would be. I think it would be more helpful.

BY MR. WEDDLE:

Q What, what was the, the range of time that Mr. -- that the County would give Mr. Holder to come with the, the fee to, to gain access to the records that he requested?

A I don't know that he had any specific period of time in mind at that, at that stage.

Q You said that you didn't know, I believe you testified that you didn't know Mr. Levey's, essentially, propensity to delete emails. Is that correct?

A That's correct. I had never spoken with Mr. Levey, maybe at all at that point in time. But certainly not about that subject.

Q So, in response to this email you never told Mr. Levey, hey, we've got this, this PIA request that's seeking your, the entirety of your email account. You need to preserve and not delete those records?

A I never had a discussion like that with Mr. Levey, no.

Q Mr. Bright, if I could focus your attention on Plaintiff's Exhibit 3 in front of you. I can help you find it if you need. You're familiar with the term preservation letter, correct?

A I've heard that term, yes.

Q Okay, and what's your understanding of it?

A Well, generally if there's going to be an anticipated litigation one might expect to receive a letter often from opposing counsel directing or requesting that records be preserved for, usually for litigation or for some purpose.

Q Okay, and focusing on the first page of Exhibit 3, this is an email from Justin Holder dated December 23rd, 2020 at 2:44 p.m. to Ms. McCarty, to Mr. Downey and to you, correct?

A That's what it suggests.

Q And this letter has a subject line of preservation of evidence, right?

A That's what it says on page one, yes.

Q And it has an attachment, Washco Preservation Letter.pdf. Do you see that? On the, on the first page at the very top? It says subject preservation of the evidence --

A Oh, attachments, Washco Preservation Letter.pdf. I do see that, yes.

Q Okay. Turning to the second page, this is a, this is a preservation letter sent by Mr. Holder to you on or about December 23rd, 2020, correct?

A Well it's a letter to Washington County

Government, Writ Large, Washington County Commissioners. And then I guess the reference line, PIA request in 2020 and tort claim notices 2020. "Documents, emails, correspondence, MDE Law, 9-503, 9-506, 9-521 and Environmental Standing ACT, County Road Repair."

Q When you receive a preservation what steps do you take in response to the letter?

A Well, if the letter specific is to what matter the records are to be preserved, I would have sent an email or letter probably one of those two to some department head and ask them not to destroy records related to that matter.

This letter I'm, I'm not so sure, in fact even sitting here today I'm not sure exactly which matter records were supposed to be preserved for. There were I think at the time, well by August of 2020 there were 23 PIA requests that had been received from Mr. Holder over a huge number of subject matters.

By December I don't know what that number had reached. But we would have been talking about thousands of documents over maybe almost every department, at least every general department of County Government. And, you know, this, this letter references PIA requests in 2020. The, the County literally couldn't have destroyed anything in its, or purged any document if, if was trying to make

sure that this so called preservation letter was abided with.

Q All right, Mr., Mr. Bright, I'm focusing on the Levey, Count Three, the Levey emails. And when I asked you at your deposition, I asked you, "And when you receive a preservation letter --"

MR. KARPINSKI: What page and line are you at, counsel?

BY MR. WEDDLE:

Q 154 Page 20, I'm sorry. Page 154, Line 22. I said, "And what, when you receive a preservation letter, what steps do you take?" You responded, "Answer: I usually cc all people relevant at the County to say, don't destroy stuff."

On the next Page 155 I ask you, "When you say, don't destroy stuff what do you mean by that? Answer: Don't destroy evidence that is relevant or could be relevant to the potential litigation. Question: What type of records? Answer: Any types of records, correspondence, memoranda and types of records. Question: Physical paper and electronic records? Answer: Yes."

So, what did you do if anything in response to this preservation letter marked as Exhibit 3?

MR. KARPINSKI: Objection.

THE COURT: What's the relevance of that

preservation letter?

MR. WEDDLE: The rele, relevance of the preservation letter is this, it's a, it says preserve MPIA request in 2020. We've got a Barry Levey. We've got Mr. Holder's email. I'm sorry, Mr. Holder's PIA request on June 15th, 2020, literally six months prior to this saying, "I'd like all emails in Barry Levey's file." Mr. Bright responds, "There's 45,000 emails." And then the emails are being deleted. But we sent this preservation letter shortly thereafter. So, the relevance is Mr. Holder asked the County, which by the way I don't know, I don't know that any pro se person would, would do. Would think about. Asked them to preserve the very PIA requests, responses that he's seeking. Sends this letter to Mr. Downey. Sends this letter to Mr. Bright. And frankly, Your Honor, we had testimony from Mr. Levey saying I, I deleted emails. And we've got testimony saying no one told Mr. Levey to not delete emails when Mr. Holder made a very specific request to the County to preserve the evidence.

THE COURT: Okay, well I thought what we were talking about is the failure to produce to the defendant by the fact that there was an investigation.

MR. WEDDLE: That's with respect to Count One, Your Honor. There are, there are, there are four counts

to this case.

THE COURT: All right, okay.

MR. WEDDLE: And this, this Count with respect to the Levey emails, those relate to Count Three, okay? And the fact of the matter is, you know, Mr. Holder went through these processes, made these requests and is now being told the emails are gone. Well, he took steps to, to ask, to ask them, to ask them to preserve them and here we are.

THE COURT: Okay, and what's your remedy under the statute? Or is it just the equity considerations if a preservation letter covers certain documents that either are not preserved after that or have not been retained before that?

MR. WEDDLE: Right, I mean it's essentially spoliation of the, of the evidence. Spoliation of the records. You know we have, we have sent the PIA requests. The, you know, frankly Your Honor, the statute of limitations is two years on PIA requests. So, it's our contention at minimum whether or not Mr. Holder had the wherewithal to send this letter, the County should have saved the results for two years.

THE COURT: My request, I believe was the remedy for failure to do that.

MR. WEDDLE: Well, I mean under the statute we're

seeking, we're seeking damages and attorney's fees related to, to this request. I think you're going to hear that, we'll, I'll reserve on that. But at, at issue is really going to be the attorney's fees related to essentially a wrongful denial because there's an inability to deny. Or I'm sorry, there's an inability to produce the documents.

THE COURT: Mr. Karpinski, what do you have to say to that?

MR. KARPINSKI: Well, I, I have a couple of things to say, Your Honor. First of all, Your Honor is to look at Exhibit 3, the "Preservation of Rights Letter", respectfully, and I do say this respectfully, is so vague and confusing that there is no way in the world that it would necessarily cover Barry Levey's emails, number one.

Number two, Barry Levey's not an employee of the County. He's an employee of the Sheriff's Office. So, the County would not be in a position to go ahead and do that anyway. And third, Your Honor, this is an, this is just another example of the, you know, I got you game with 150 PIA requests being sent to the County. Because actually, the email that is the subject of Count Three is actually Exhibit 5. And it's actually dated, it was in, it was a Public Information Act request sent to the Town of Keedysville dated October 16, 2020, Number 35 and the response is the "Morral email to the Town Hall" that

apparently was supposed to be sent to Barry Levey and this is just a matter of, you know, trying to say, I got you. So, you send a vague letter that basically says, don't destroy anything. It doesn't really have any real specifics to it. Then you already have the document. Mr. Holder already has it. And now he's coming in and saying, well, Mr. Bright, why didn't you go ahead and take all of these additional steps? When Mr. Bright, I've heard no testimony that Mr., Mr. Holder came back and said he had any interest in paying this $10,000 to go ahead and get any of this, get this search done. None. So, I mean we're just kind of going around in circles here on, you know, whether Mr. Holder can out fox everyone in Washington County by just going ahead and inundating them with things and going ahead and seeing how he, they can go ahead and trip people up. And that's really what all this comes down to.

THE COURT: Okay. I don't think it necessarily goes to the admissibility of the document. But it may well go to the weight it's to be given, if any. Particularly I'm concerned about the assertion of the Sheriff's Office versus the County. But I'll overrule the objection at this point.

BY MR. WEDDLE:

Q Mr. Bright, with respect to the 16 emails that

are in Plaintiff's Exhibit 7 which are the subject of Count One, those documents were given to Mr. Holder at the end of August 2021, correct?

A I don't have personal knowledge of that, but I understand based on what I've been told that they were provided to him sometime in that timeframe.

Q Okay. Why, why were the documents provided to him on August 31st, 2021?

A Again, I was not involved in that decision, but my understanding from what others have told me is that by that time Judge Michael deferred that question back to Mr. Downey or somebody in the County Attorney's Office and the discussion was, well if, if, if now Judge Michael doesn't have any interest in not releasing them, the County Attorney's Office never did really care, to be blunt about it. I, I never had a personal reason for not releasing those records in the first place. I was just concerned that another state agency, the State's Attorney's Office may have confidentiality claim as to them and I was just repeating that confidentiality claim. I never had any reason to disclose or not disclose. It didn't matter to me. In fact, I think Mr. Downey's words to me back very early on, certainly in the fall of 2020 is why are we getting drawn into a dispute between Mr. Holder and the State's Attorney's Office? We don't have a dog in that

fight, so to speak.

Q Well the dog you have in that fight is, you are the keeper of the documents on this, the State's Attorney documents on the County server, correct?

A Those records --

MR. KARPINSKI: Objection as to form.

THE COURT: Sustained.

BY MR. WEDDLE:

Q Isn't it true, Mr. Bright, that you, I'm sorry, that the County keeps the State's Attorney's documents on its servers?

MR. KARPINSKI: Objection as to form.

THE COURT: What's the form objection on that one?

MR. KARPINSKI: Well, I don't think a foundation has been laid. And quite frankly, I don't think it's an accurate statement to say that the County maintains all of the State's Attorney's documents. Obviously, the County --

THE COURT: All right.

MR. KARPINSKI: -- doesn't maintain all the State's Attorney's documents.

THE COURT: I thought the inquiry was to find out if that was the case. How did you phrase it?

MR. WEDDLE: I, I simply want to know this,

doesn't the County --

THE COURT: How did you phrase it? Because I, I thought you were just asking if that was the case.

MR. WEDDLE: Yes, that, that's -- I'll frame it that way.

THE WITNESS: Here's as much as I know about the subject, the State's Attorney's Office --

THE COURT: I'm not saying you, you framed it wrong. I'm just trying to make sure that I understood your question.

BY MR. WEDDLE:

Q If I recall the question, I want to know if the County is, isn't the County the custodian of the documents that the State Attorney holds?

A Here's where we get into problems. The State's Attorney's Office uses the email server that's administered by County, an employee of County Government. Now, does that make the County the custodian in the legal sense, the custodian of those records? I don't know, is the phone company the custodian of, of my records? You can get into legal discussions about it. I, erring on the side of look, it's in our physical custody, our being County Government, it's in our physical custody. I had already been accused and I think was accused again during your opening statement of playing games of hide and seek

or hide the ball or whatever the term was about records. I had zero intention of playing hide of the ball from Mr. Holder or anyone else. If there was a record that was in our custody, in our possession, okay, it's here and I may or may not be able to give it to you, and my understanding of the PIA was that I should consult with the agency that originated that record, which from our position was the State's Attorney's Office and see whether that agency had any objection or any confidentiality concern, reason why the record should not be disclosed. And if so, I believed that it was incumbent upon me as the person with physical possession of that record to assert whatever confidentiality claim the originating agency may have had.

So, I contacted Joe Michael. He told me what we've already discussed, and I denied the PIA request. But I was not trying to play hide the ball or gotcha or whatever as to whether that record existed from Mr. Holder.

Q You don't know of any other custodian of the rec -- of the State's Attorney's email account but the County, correct?

A No, that's not true. I think that all of those email communications were retrievable by Mr. Michael from his own Outlook Express or Outlook software. He could just as easily been the custodian of the record as Mr.

O'Neil who happened to have access to it as the, the email administrator.

Q I'm talking in a, in a Public Information Act request sense. You don't know of anyone else other than the County that Mr. Holder should have submitted his PIA request to if he wanted to obtain the emails in, in Judge Michael's email account that --

A That's not true.

Q Who is it?

A The State's Attorney has designated a custodian of the State's Attorney's records.

Q Who is it?

A It's published in the PIA manual. I don't know who it is. At that point in time, it might have been Joe Michael. But it might have been Charlie Strong. It might have been Gina Cirincion. Some employee of the State's Attorney's Office is designated as a custodian of the records for the Agency, the State's Attorney's Office for Washington County.

Q And I asked you this question during the deposition and you told me that you didn't know who it was, correct?

A I, I don't remember if I said that during my deposition. If I said that during the deposition I'm mistaken because I'm very certain and, and I don't know

the context of the question I was answering. But I can assure that the State's Attorney's Office as an agency of Maryland Government has designated a custodian of records for that office.

Q But you, and you never told Mr. Holder, hey, I can't answer this. Go ask some other custodian, did you?

A Well, I beg to differ. I said that, I've got the wrong exhibit. I believe I told him that the source of the objection was the State's Attorney's Office. And I would love for Mr. Holder to have taken up his fight with Mr. Michael.

Q We might be communicating past each other?

A I don't mean to be. I'm trying to ask your questions honestly.

Q I'm simply asking you this, you never told Mr. Holder, hey Justin, you've made the request to the wrong agency. Go ask someone else. Go ask the named custodian in the PIA manual that holds the State's Attorney's email accounts. You never said that to him, did you?

A I don't recall saying that in those words, no.

Q How about any words?

A I notified --

MR. KARPINSKI: Objection.

THE COURT: Sustained on, "How about in any words"?

MR. WEDDLE: I'm sorry?

THE COURT: "How about in any words?" Why don't you rephrase that?

BY MR. WEDDLE:

Q In any, in any words in any manner did you say that to Justin?

A I was not trying to get into a legal debate with Justin. But I don't think I hid the fact that the only person who had an objection to the release of those records was the State's Attorney for Washington County.

Q Are you aware, sir, that Mr. Holder has asked Gina, I think you said Gina Cirincion, who is Gina Cirincion?

A She's the State's Attorney for Washington County. At that point in time, she would have been the Deputy State's Attorney for Washington County.

Q Are you aware that Mr. Holder has asked Ms. Cirincion to provide him with documents related to the State's Attorney's Office.

A No.

MR. KARPINSKI: Objection, hearsay.

THE COURT: Sustained.

BY MR. WEDDLE:

Q And as you sit here right now, you can't tell me who in the PIA manual the State's Attorney has designated

as the custodian of record for its email accounts, correct?

A No, and I can't tell you who a great number of State agencies has nominated. I know where to find it. It's in the PIA manual. It's probably published in other places as well.

Q Mr. Bright, turning your attention to Count Four. You're aware those are the four emails in dispute between, one email is between yourself and Judge Michael on August 4th of 2020. Another email was sent from, on the same date August 4th, 2020, from Judge Michael to yourself regarding the first PIA request. A third email was sent October 14, 2020, from yourself to Judge Michael regarding Mr. Holder's second request. And a fourth email was sent from Mr. Michael to yourself regarding Mr. Holder's second PIA request. Are you familiar with those emails?

A I'm generally familiar that emails went back and forth on or about those dates.

Q And those emails were not produced in discovery, correct?

A In discovery in this case?

Q In this case, yes, sir.

A I have no idea whether they were produced in discovery or not.

Q Those emails were non-privileged, were they not?

A They were communications between me and and Joe Michael. I don't, I don't know of any privilege off the top of my head that would have applied. I suppose they're attorney work product and that they went into and fashioned my decision to deny the request. So, they could be characterized as attorney work product and be privileged for that reason.

Q Okay, are you, are you familiar with the answers to interrogatories filed on behalf of yourself, the County and Mr. Downey?

A I, I'm not specifically familiar with each answer to interrogatory, no.

Q I'm turning your attention, well first off, I'm sorry, Mr., Mr. Bright. These are answers to interrogatories by the County, by Mr. Downey and by you, correct?

A Appear to be.

Q And they are, they are, they were served on March 29th, 2022, correct?

A I'm sorry what was your question again? What -- they were --

Q These answers to interrogatories were served on Mr. Holder if you turn to the last page --

A Mm-hm.

Q -- on March 29th, 2022?

A 29th, I, I misunderstood you, yes. Okay.

Q Okay. If I could focus your attention on answer to interrogatory number 8 and that's on Page 5 of 16. And that answer to interrogatory asks, I'm sorry. That interrogatory asks for, "Identify all communications made by any Defendant or any of its employees, members or agents related to the subject matter of this case. Such description should include, but is not limited to the date, time, type of communication for example phone call, memo, letter, etcetera, parties of the communication and all information and business records or elsewhere of the substance of the communication." There was an objection to the interrogatory, "To the extent that it seeks communications protected by the attorney/client privilege and/or work product doctrine. Without waiving said objections, the non-privilege communication are as follows." Do you see those four email communications?

A I see it.

Q Okay, and those email communications are the subject of Count Four are they not?

A I believe so.

Q Okay, and the County in answer to interrogatory, I'm sorry, you in answer to interrogatory number eight took the position that those communications are non-privileged, correct?

A Well, let me correct my earlier answer. You know by the time these answers to interrogatories were prepared I was no longer an employee of the County Attorney's Office. So, I don't want to mislead anybody into thinking that I was specifically involved in the wording of that response to your answers to interrogatories. I didn't sign these answers to interrogatories. I don't believe anybody ever asked me to sign these answers to interrogatories. So, I don't, I don't dispute what the answer to interrogatory says. And I don't dispute that any of those emails exist. Whether they're privileged or not privileged I don't, I don't know that I've ever been asked to form an opinion or do any research into that question.

Q You won't deny though that these answers to interrogatories were sent on your behalf, correct?

A I believe they were signed by the County Administrator and by counsel.

Q Correct.

A They're in response to a set of interrogatories that were directed to Board of County Commissioners, Kirk Downey and me. I just don't want to mislead anybody into thinking that I was involved in preparing them. I was not specifically involved in the wording of any of these answers to interrogatories.

Q I understand, but on the very first page it says, "Board of County Commissioners for Washington County, Kirk Downey and B. Andrew Bright, Defendants by Karpinski, Cornbrooks and Karp, PA and Kevin Karpinski, their attorney's answer plaintiff's interrogatories state." Right? So, these were submitted on your behalf, were they not?

A They were submitted on my behalf. They were prepared by counsel for all three defendants.

Q Okay. And you, sir, you'll agree with me that as of the date of this interrogatory response, that would be March 29th, 2022, those four communications identified in interrogatory number 8 were not, had not been provided to Mr. Holder, correct?

A On March 29th, 2022?

Q Yes, sir.

A I have no knowledge of that. I was not an employee of the County Attorney's Office for Washington County on that date.

Q Okay. Your Honor, I move to admit, is this Plaintiff's 27?

(The document referred to was marked as Plaintiff's Exhibit No. 27 for identification.)

MR. KARPINSKI: I object.

THE COURT: Pardon me?

MR. KARPINSKI: I said, I object. The answers themselves shouldn't come in as substantive evidence.

THE COURT: Answers of an adverse party?

MR. KARPINSKI: Yes.

THE COURT: He read it into the record as --

MR. KARPINSKI: I can certainly read that --

THE COURT: -- I recall.

MR. KARPINSKI: -- but it shouldn't be an exhibit.

THE COURT: Oh, to the extent that the, all the answers are moved in as an exhibit I agree with you. Counsel can read the question and the answer into the record under the rules.

MR. WEDDLE: May I --

THE COURT: If you want to do that, I mean you can't wholesale it.

MR. WEDDLE: Sure, May I --

THE COURT: Just say they're all going in.

MR. WEDDLE: May I back up and read again, plaintiff's answer to interrogatory number eight and the question?

THE COURT: Well, if you feel it hasn't been adequately read into the record at this point, yes.

MR. WEDDLE: I, I just want to be, be very clear

that they're -- I'll read the whole thing because I don't think I read the entire answer.

THE COURT: All right.

BY MR. WEDDLE:

Q Mr. Bright the interrogatory number eight asks, "Identify all communications made by any defendant or any of its employees, members or agents related to the subject matter of this case. Such description should include, but is not limited to the date, time, type of communication. For example, for each phone call, memo, letter, etcetera, parties to the communications and all information and business records or elsewhere of the substance of the communication.

Answer: Objection to this interrogatory to the extent that it seeks communications protected by the attorney client privilege and/or work product doctrine. Without waiving said objection the non-privilege communications are as follows: 1) August 4, 2020 email from B. Andrew Bright to Joseph Michael inquiring as to the whether the responsive emails are records of an ongoing investigation; 2) August 4, 2020 email from Joseph Michael to B. Andrew Bright indicating that the records pertain to an ongoing investigation; 3) October 14, 2020 email from B. Andrew Bright to Joseph Michael indicating that plaintiff had renewed his request and inquiring as to

the status of the associated investigation; 4) October 14, 2020 email from Joseph Michael to B. Andrew Bright informing him that plaintiff was under pending criminal investigations to which the communications relate. Any communications sent to or by plaintiff are not included in this list above because plaintiff has access to those communications.

Additionally, there exists communications between undersigned counsel and defendants relating to the instance litigation which are the subject of attorney client privilege.

One second, Your Honor. I apologize. If I may ask the clerk, do I have Plaintiff's 24, 25 and 26 admitted? Yes? Okay.

Mr. Bright, going back to the Count Three, the Levey, emails and in particular the preservation letter that we discussed. I believe you testified that it was Mr. Holder's preservation letter was too complex or you didn't quite understand the scope of it. Is that correct?

MR. KARPINSKI: Objection, mischaracterizes the testimony.

THE COURT: Well, he's asking if that's correct or not so overruled.

THE WITNESS: I believe it's so broad and vague that it would apply, could apply to each of or all of the

PIA requests that Mr. Holder had submitted and that conceivably it could require that the County never destroy any or purge any record. That's I believe my testimony. It never mentions anything about, to my knowledge it doesn't mention anything about the Barry Levey emails. It makes reference to Department of the Environment sections and all, well PIA requests in 2020 which included by that time well in excess of 25 different PIA requests. So, I, I, I would not have known how to, how to apply it or what to apply it.

BY MR. WEDDLE:

Q Did you ever ask Mr. Holder to narrow the scope of the preservation letter?

A No, I did not.

Q Did you ever ask him to further define it?

A No, I did not.

Q Okay, and you took, you took no further efforts to preserve any of the, the PIA requests that he made in 2020 whether it's the Barry Levey one or any other, correct?

A I don't recall any specific action I took in response to that letter, correct.

MR. WEDDLE: Thank you. That's it.

THE COURT: That's it. Any inquiry, Mr. Karpinski?

MR. KARPINSKI: Your Honor, would you like me to see whether I can get through this witness so that we don't need to call him back in our case?

THE COURT: Your, your call. That's fine. So, what you're saying going into what in essence would be direct examination as your witness?

MR. KARPINSKI: Correct.

THE COURT: Subject to fair objection that's fine.

CROSS EXAMINATION

BY MR. KARPINSKI:

Q Okay, now Mr. Bright, let's go ahead and, you've covered some of this, but when did you graduate law school?

A 1991.

Q And where did you go to law school?

A University of Baltimore School of Law.

Q Okay, and why don't you tell Your Honor what you did after you graduated from law school and passed the bar?

A I passed the bar and was admitted in December, December 17th, 1991. Starting in March of 1992 I went to work for the Law Firm of Robert Veil, P.A., practiced with Bob Veil for three years. Went out on my own in September of 1995 and practiced as a solo attorney from 1995 until

2019. So, I think that's, I think that was about 20, 24 years. Something like that.

Q And where are you currently licensed to practice law?

A Currently just in the State of Maryland. At one point in time, I had been admitted to the Bars of West Virginia and Pennsylvania. And when I went to work for the County, I was no longer going to actively be involved in those States, so I let those two Bar memberships lapse.

Q Okay, am I correct that you started with the County Attorney's Office on June 28 of 2019?

A That's correct.

Q Okay, and would you describe for the Court what your duties and responsibilities were within the County Attorney's Office?

A Sure. I was responsible for researching, for giving advice to the commissioners on various topics. Responsible for assisting and preparing pleadings that the County Attorneys, the County Attorney was involved in. I was responsible for, on occasion, preparing open meetings statements if, if those were necessary. A fairly large percentage of my time I was assigned to review and respond to MPIA responses and so I did that.

Q Okay, and what was your title within the County Attorney's Office?

A I was an Assistant County Attorney.

Q Okay, and as I understand it you were tasked with responding to a number of Mr. Holder's MPIA requests?

A Yes, I was.

Q Okay, and can you just describe in general terms the requests that you received, what were the subject areas of those requests?

A There were several of them. It started with requests about sewer hookup to two properties he had some interest in in the Town of Keedysville. And so, there were requests for records of the Department of, my mind's drawing a blank, environmental services and and also requests for, to print records of the predecessor of that agency back when there was Washington County Sewer Authority that was initially involved in installing sewers in and around various parts of the County, including Keedysville. So, Mr. Holder wanted all correspondences and records of the Sewer Authority. They were thousands and thousands of records.

Later Mr. Holder was involved in I believe a right of way dispute with various neighbors. He was, I believe trying to assert a right to an ancient road that Mr. Greivell gave some testimony about. So, he sent a great number of PIA requests about that. Then there were obviously PIA requests regarding communications from other

people that he was involved in those conflicts with and, and the County in one form or the other or with other agencies.

There were, there were many of, many different requests and several follow ups, when he would, you know receive one set of records.

Q And you indicated, I believe, that there was an ongoing, a list that was maintained of the PIA requests?

A There was, maintained by Rachel McCarty.

Q And what was the purpose of maintaining that list?

A One to make sure that we didn't miss any. We wanted to comply with the statute and not leave any of the requests unanswered or, or overlooked both because we were obligated to do that by the statute; and two, honestly, we didn't want to be sued for, for not having done it. So, many of the requests would require follow up. If they were of a large volume we were sending, forwarding the requests on to a department head and then we hadn't heard on that one, but we got sidetracked on a subsequent one. We just didn't want to leave any orphans.

Q Okay, and did you, were you aware of anyone else that was submitting the volume of MPIA requests that you were receiving from Mr. Holder?

A Not even close.

Q Okay. So, Mr. Holder was sort of in his own category in terms of the volume of MPIA requests that were actually being submitted?

MR. WEDDLE: Objection, form.

THE COURT: Overruled.

THE WITNESS: Yeah, Mr. Holder was, was unique in that no other requester that I was familiar with during the time I was there submitted more than maybe one or two PIA requests. Maybe a follow up or two. But Mr. Holder was in a whole league of his own, you know, at, at the volume, the number of requests he was submitting.

BY MR. KARPINSKI:

Q Okay, and your deposition in this case was taken on September 26th of 2022. Does that sound about right?

A Sounds about right.

Q Okay, prior to September 26th of 2022, had you ever met Mr. Holder?

A Not that I recall.

Q Okay, how did you communicate with Mr. Holder?

A Usually by email or sometimes email letter. You know, send an email with a letter attachment.

Q Okay, and when you were in the County Attorney's Office were you in fact a County employee?

A Yes.

Q And I take it you now have a new position,

correct?

A I do.

Q And that position is with the Sheriff's Office of Washington County?

A I'm the attorney for the Sheriff's Office, yes.

Q Okay, are you still a current county employee?

MR. WEDDLE: Objection, relevance.

THE COURT: It's enough background. It's background so I'm going to overrule the objection based on that.

THE WITNESS: I'm compensated by the County but under case law and common law I'm an employee of the Sheriff of Washington County who is a State officer.

BY MR. KARPINSKI:

Q And is the Sheriff who you for lack of better term, answer to at this point?

A That is the term I answer --

MR. WEDDLE: Objection. Same objection.

THE COURT: Overruled.

THE WITNESS: That is the term. I do answer to the Sheriff and take direction from him.

BY MR. KARPINSKI:

Q Okay. I'm going to show you what's been marked as -- I'm going to get this right before the trial's over. Respondent's Exhibit 6 as opposed to Defendant's Exhibit

6. Thank you.

(The document referred to was marked as Defendant's Exhibit No. 6 for identification.)

A Thanks.

Q Mr. Bright, can you please identify Exhibit 6 for the Court?

A This is an email from Josh O'Neil dated June 17, 2020. It's directed to Rachel McCarty who, as I said, is our legal assistant, copied to Kirk Downey and to me.

Q Well, let's start with -- I, I did this the wrong way. Let's start on the second page.

A All right.

Q Why don't you describe from the second page moving forward to the first page?

A Understood. The second page is an email from Justin Holder to Kirk Downey and it requests, please provide all emails between the email address blevey@washco-md.net for the past three years. Please respond in ten days with a time and cost.

Q Okay, am I correct that that was then forwarded to you and Ms. McCarty from Mr. Downey?

A Yes, it was.

Q Okay.

A It looks like --

Q And if I'm --

A -- the same day.

Q -- if I'm looking at the middle of that email it looks like Ms. McCarty in turn sent it to Mr. O'Neil with a copy to you and Mr. Bright?

MR. WEDDLE: Your Honor, this is when I'm going to interpose an objection to this document. Again, this document was not produced in the course of discovery. This document was asked for. This document was not, this document was not set forth in the Answers to Interrogatories. It is prejudicial for this document to come in, to be allowed to come in for the witness to be able to answer questions about it when it was not produced prior in the normal course of discovery in this case.

MR. KARPINSKI: Well, I'm not sure, Your Honor, that it was really even -- this is, this is unrelated to any of the MPIA requests. But I did send it to Mr. Weddle last week and said, I am going to go ahead and use this at trial, because it clears up this issue of whether Mr., Mr. O'Neil sent these 45,239 emails to Mr. Downey and to Mr. Bright.

MR. WEDDLE: Your Honor, my response to that is, well, gee, this would have been a very nice email, with all due respect to Mr. Karpinski to have while Mr. O'Neil was on the stand. I did not have this email on Wednesday

when Mr. O'Neil testified. So, I could not inquire of him about this. It was provided I believe by Mr. Karpinski on Friday after Mr. O'Neil left the stand.

MR. KARPINSKI: Well, the email simply clarifies what Mr., Mr. Bright was provided. And I think what the plaintiff would like, Your Honor, to believe is is that Mr. Bright was provided 45,239 emails including the email involving Barry Levey and that the Court should be quite frankly misled into what actually occurred here. Because Mr. O'Neil testified that he thought that he forwarded the emails to Mr. Bright and he did not.

MR. WEDDLE: Which is the very reason why this document needed to be produced in the litigation.

THE COURT: Your prejudice, is it you weren't able to ask Mr. O'Neil questions about that?

MR. WEDDLE: Among other things, yes, yes. And that's the whole purpose of the discovery process is so that I get emails like this so that I can prepare the case. And when Mr. O'Neil testifies that, yes, I indeed sent -- "It is my practice" I believe was his testimony --

THE COURT: Mm-hm.

MR. WEDDLE: -- to send the responses to the PIA requests to the County and then the County, I'm done and then the County it's their obligation to respond. And, and, and when we don't have something like that or there's

a different suggestion that is, that is prejudicial.

THE COURT: Is there any reason why you couldn't, can't recall Mr. O'Neil? I mean he may have been excused, but we can undo that.

MR. WEDDLE: Well, to the extent I haven't subpoenaed him, or if he doesn't come voluntarily. If he comes voluntarily, I guess I could ask him about it. But I certainly don't have a subpoena out for him. So, I don't have the power to compel him right now to have him come here and testify to it.

MR. KARPINSKI: He's a County employee, we'll produce him.

THE COURT: Okay. Subject to that we'll admit it. But I -- or we'll reserve, or I'll reserve ruling on admitting it and make sure Mr. O'Neil appears tomorrow or whatever.

MR. WEDDLE: I'd, I'd ask that he appears tomorrow. I mean I think that's fair game.

THE COURT: Okay, fair enough.

BY MR. KARPINSKI:

Q Okay, so --

THE COURT: Are you moving into evidence? We never quite got to that point.

MR. KARPINSKI: I am, Your Honor, yes.

THE COURT: Okay. So, petitioner's, wait a

minute, Respondent's Exhibit 6, right?

MR. KARPINSKI: Correct, Your Honor.

THE COURT: Has been moved into evidence. The Court reserves -- do you need to ask questions about that now? About this now?

(The document marked as Defendant's Exhibit No. 6 was received in evidence.)

MR. KARPINSKI: Well, I was just going to ask whether -- for Mr. Bright to indicate whether Mr. O'Neil sent Mr. Levey's emails for the three year period? I mean he testified that he did not.

THE COURT: Okay. And that's not terribly substantive, perhaps. So, I'll reserve ruling on Exhibit 6. Or if somebody needs to use it today, I will admit it subject to striking it from evidence. So --

BY MR. KARPINSKI:

Q Well, maybe I can, I can approach this another way. Mr. Bright, were you provided the 45,239 emails totally 5.87 gigabits?

A No.

Q Okay. Were you provided an email from Mr. O'Neil regarding the size and the volume of the number of -- the number of emails and the volume of emails?

A Yes, I did.

Q And did you use that as the basis for the letter that you sent to Mr. Holder, which is Petitioner's Exhibit 2?

A Yes, that was the basis for it.

Q Okay.

A We had quoted him fees on others of his requests and some of them he, some of them he paid the fee and received the records and some of them he did not.

Q So in response to your June 23, 2020 letter that has been admitted as Petitioner's Exhibit 2, did Mr. Holder ever reach out to you and tell you, Mr. Bright, I'm going to pay the $5,000 to begin the process?

A Not that I recall.

Q Okay. Did he ever present you, the County with a check for $5,000 for you to initiate that review?

A Not that I recall.

Q Do you sitting here today have any recollection of receiving any response from Mr. Holder in follow up to your June 23, 2020 letter regarding the response regarding all emails to and from blevey@washco-md.net for the past three years?

A If there was one, I don't know it or remember it.

Q Okay. If you would go to Petitioner's Exhibit 1? And if you go to the last page.

A I'm sorry. I'm still trying to find 1. I got

it, sorry.

Q Okay.

A Okay, I have it.

Q Okay, and it begins with, it's a, it starts with an August 3, 2020 email from Mr. Holder to you and Mr. Downey, correct?

A Correct.

Q Okay, and it appears that you then in turn sent it to Josh O'Neil, correct?

A Correct.

Q In your, in your email forwarding it to Mr. O'Neil you say, "As I have no idea to define 'county official' we should probably search for emails, correspondence with this person to or from any employee for the given timeframe." Do you see that?

A I do see that.

Q Okay, when you say you have no idea to define a "county official" what, what did you mean by that?

A I, I didn't want to get hung up in anybody's definition of what is an official and Mr. Holder had requested in his, among his other PI requests, emails from, you know, building inspectors to the, you know, to the electric company and just various kinds of things. And I didn't want to get caught up in a definition about what constitutes a "county official". So, rather than

having Josh O'Neil try to make that determination, I just wanted the emails with anybody in the County.

Q Okay. And I take it you got a response back from Mr. O'Neil?

A Yes, I did. It's the next one up on that same email thread.

Q Okay and describe for me what you did after you got the, the response from Mr. O'Neil.

A Well, as I recall I looked at the emails that Mr. O'Neil had forwarded to me and determined that they were emails between Ms. Morral and Deputy State's Attorney Joe Michael. And so, I didn't know if they were part of an investigat -- whether they constituted investigatory records or not. If they did, I, I, wanted Joe Michael to advise about that. So, I forwarded the emails to then Mr. Michael, Judge Michael and asked him if there was any reason not to produce the records.

Q Okay. Let me show you -- I apologize, Your Honor. Too much paper here. Seven?

THE COURT: Thanks.

BY MR. KARPINSKI:

Q I'm going to show you what's been marked as Exhibit 7. And if you could turn to the last page? Actually, turn to the second to last page --

(The document referred to was

marked as Defendant's Exhibit No. 7 for identification.)

A Well this is only a two page document that I have here.

(Discussion off the record.)

BY MR. KARPINSKI:

Q Oh, that's part of it, yeah. So, let's take a look at the second page of that document. And is that, at the bottom is that Mr. O'Neil telling you the 16 emails that fall within the parameter specified by Mr. Holder?

A Yes, it is.

Q Okay, and it looks like you then forwarded it to Joe, Judge Michael on August 4 of 2020 at 2:34?

A Yes, sir.

Q Okay, and then at 3:07 he wrote back, "Ongoing investigation and pending charges."

A Yes.

Q Okay, and did you have a conversation with Judge Michael?

A Yes, I did.

Q Okay, and what, tell the member, tell, tell the Court what you all discussed.

MR. WEDDLE: Objection to the extent it asks for Judge Michael's testimony per response from Judge Michael to Mr. Bright. It would be hearsay.

THE COURT: Okay, based upon your hearsay argument?

MR. WEDDLE: Yes.

THE COURT: All right. Well, I'll hear the testimony first. I'll strike it if we need to or make arrangements for Judge Michael to reappear if need be. So, overruled at this point.

THE WITNESS: Well, I forwarded the email to Judge Michael. I then called him on the phone at or about the same time because I wanted to discuss it with him. And I asked him whether those emails were part of any kind of an investigatory record and whether disclosing them was going to harm any case he might, case or cases that he might have. He told me that there were several matters that Mr. Holder was involved in which implicated the State's Attorney's Office that those were in fact ongoing investigations to his understanding, and that he thought that emails should not be produced as part of the PIA. He thought that some words to the effect, he thought that producing them was doing some kind of end run around the rules of criminal discovery, which I -- well that's, that's what he said. And I asked him, would you please send me some kind of an email to that effect so that I'll have it in my file? And that's when he sent the email at 3:07. "Ongoing investigation and pending charges."

It has always been my experience with Judge Michael that written communications are going to be very short, somewhat abbreviated and just get to the point. That was just his way, or his style.

Q Okay. Now, this obviously wasn't the first MPIA that you had responded to correct?

A No.

Q Okay, in terms of when you took the job at the County Attorney's Office did you familiarize yourself with the, the Maryland Public Information Act Manual?

A Yes, I did.

Q Okay, did you familiar yourself, familiarize yourself with the case law that would be relevant to responding to MPIA requests?

A Some of the case law.

Q Okay. Did you refer to any of the case law in connection with evaluating Mr. Holder's August 3 of 2020 MPIA requests?

A I think I started by looking at the PIA manual and located what seemed to be the relevant section, which referred to records that had originated in a different agency and looked at the section involving, investigatory records. There were citations in the PIA manual to several cases. One of which being Faulk versus State's Attorney's Office. I think that's Harford County. There

was a decision from Frederick County that Randall Family, LLC and language that's cited therein. I think that there, I looked at another case which was Blythe versus State. If I'm remembering it correctly. I'm a long way out of law school and I never was really good at citing case names as we went. I think I was pretty good at reading them and applying them at the time. But reciting from memory probably wouldn't be my strong suit.

Q Okay. Did you consult the Maryland Judiciary to look up whether there were any pending cases?

A I did open Maryland Judiciary Case Search just to see whether there were any pending cases primarily against Mr. Holder and I think I probably, well not probably, I did, I looked up Ms. Morral as well. And I did identify that there were criminal cases going on in some kind or fashion against each of those. I don't remember whether I looked up any others or not.

Q In your, in your email to Mr., Judge Michael the end, where it says, "Question: Are these emails records of an ongoing investigation protected by GP Article 4-351? If not, I think I should send them to him." Do you see that?

A I do see it.

Q Okay, and were you prepared to send the 16 emails that were responsive to Mr. Holder if Mr. Michael, or

Judge Michael told you it was fine to send them?

MR. WEDDLE: Objection.

THE COURT: Could you phrase, could you repeat that question?

BY MR. KARPINSKI:

Q Sure, sure. From the prospective of the County Attorney's Office did you, did you have any objection to producing the records that Mr. Holder had requested?

MR. WEDDLE: Same objection.

THE WITNESS: No, I --

THE COURT: Overruled.

THE WITNESS: I have no objection to, I intended to send them to Mr. Holder if Judge Michael did not have an objection under that section or I guess some other section.

BY MR. KARPINSKI:

Q Okay. Now, in your letter to Mr. Holder, which let me, let me get it. It is Petitioner's Exhibit 24. In your response did you identify the dates of your denial of the request?

A Well, I haven't located the letter, but I do recall the letter. I think I cited to GP Article Section 4-351. That goes up to 23.

Q I'll give you my copy.

MR. WEDDLE: Are we missing --

MR. KARPINSKI: Petitioner's Exhibit 24.

MR. WEDDLE: Let me see.

THE WITNESS: I don't know. Somehow, they've gotten shuffled out of order.

MR. KARPINSKI: Okay.

THE WITNESS: So, it could be here and I'm missing it. There it is.

BY MR. KARPINSKI:

Q Okay. So, in your letter did you go ahead and indicate the basis for the denial?

A Yeah, I --

MR. WEDDLE: Objection. Leading.

THE COURT: Well, this is, is this cross or direct since you asked to combine them?

MR. KARPINSKI: Well, I don't know if it's leading. I said, I said did you? I mean maybe he's going to tell me he didn't.

MR. WEDDLE: Same objection.

THE COURT: Okay, overruled.

THE WITNESS: I, I cited to the code section that's mentioned there and gave a very brief explanation as to why I thought that code section applied to the records that were requested.

BY MR. KARPINSKI:

Q Did you reference the State's Attorney's Office?

A Yes, I did.

Q Okay, and you had been advised that the records you have requested are in fact records of an ongoing investigation? And involve current prosecution?

A That's correct.

Q Okay, it looks like from your letter you also indicated that Mr. Holder could seek judicial review of that decision. Is that correct?

A I did, and that was kind of form language that we used. But I recited that anytime there was a denial.

Q And to your knowledge, did Mr. Holder seek judicial review?

A Well I guess this case.

Q Okay.

A Eventually I think he did.

Q Okay. And your letter references the contacting the public access ombudsman. Do you see that?

A I see that.

Q Do you know whether Mr. Holder contacted the ombudsman?

A Not about this request. I believe he did contact the ombudsman if I'm remembering correctly about a different request that he had sent, and I quoted him a fee. I, I, my memory's fuzzy on that. He either contacted the ombudsman or he contacted the PIA Review

Board objecting to the amount of one of the fees on a different request.

Q Okay. I'll direct your attention to Respondent's Exhibit 1. Are you able to identify that document?

A Yes, these are, this is an email thread that originated from Mr. Holder on October 14th directed to me. And then looks like I forwarded his email to Judge Michael same date and received a response from Judge Michael same date.

Q Okay, and what was Judge Michael's response?

A Mr. Holder is under criminal investigation and pending prosecution for activities related to those communications.

Q Okay, do you recall speaking to Mr., to Judge Michael?

A I think I spoke to him again on this date. It was either on this date or on the January date where we went back and forth. I know I had at least two phone conversations with Judge Michael about this renewal. Well, the original request and then one of the renewals.

Q Okay, and was, did you deny that Mr. Holder's renewed requests for the same reasons you denied the October 3, 2020 request?

A I did and I sent another letter to Mr. Holder, and I think the only difference in the two letters may be

the word still and that there's still a prosecution going on according to Judge Michael.

Q I haven't put it into evidence yet.

A Oh, I --

Q Is it there?

A I realize there's not a question, Your Honor, I'm just trying to be helpful, I -- is this the letter you're talking about?

Q Yes.

A Okay.

Q So, for the record it's Petitioner's Exhibit 26. Is that the letter you sent?

A The, the last page of it is. The first three pages are the email thread that surrounded it and I, I believe that Mr. Weddle attached it to that email thread because I think it was an attachment to one of the emails in that, in that response.

Q Okay, and did you receive follow up in January of 2021 regarding Mr. Holder's request?

A Yes, I did, another renewed, renewal of the request in some form from Mr. Holder.

Q And did you forward that to Mr. Michael? Judge Michael?

A Yes.

Q Okay. And take a look at Respondent's Exhibit 2,

could you identify that?

A Yes, that's an email thread. First there's an email from me to Mr. Holder. And then a forwarded message from Joe Michael on the same date, January 21, 2021.

Q And did that advise -- were you informed that Mr. Holder was represented by counsel?

A I was by that email. I don't think, I don't think I had a phone conversation with Judge Michael on that date. I think that email was it.

Q Mm-hm. And did you subsequently get status reports from Judge Michael regarding the status of the matters involving Mr. Holder?

A I don't recall whether there were any more from January 21 up until I left the County Attorney's Office. There may have been, but I'm not recalling them right now.

Q So, let me direct your attention to Respondent's Exhibit 4. That looks like it's a July 27 email. You would have already left the Sheriff -- you would have left the County Attorney's Office?

A I had. This does refresh my recollection. Even though I was not in the County Attorney's Office anymore, I still had the same email address and so I do recall receiving this email, Respondent's 4. But I was over in the Sheriff's Office, and I was no longer directly involved. It was still a matter of some recent interest

to me at that point in time, but I was kind of out of the loop by that time.

Q Okay, but would it be fair to say that in July the matters were still ongoing and pending?

A That was my --

MR. WEDDLE: Objection. Leading.

THE COURT: Overruled.

THE WITNESS: That was my understanding based upon this email, yes.

BY MR. KARPINSKI:

Q Actually did you, have you ever been told that there's been final resolution as to Mr., any, all pending criminal charges and investigations involving Mr. Holder?

A No, I'm not involved --

MR. WEDDLE: Objection, hearsay.

THE COURT: Well, it goes to notice, not necessarily the truth of the matter. Overruled.

THE WITNESS: Yeah, I'm not, I'm not involved in any of that. I, I don't, I don't have any involvement in any prosecution of, of Mr. Holder.

BY MR. KARPINSKI:

Q Okay. Did you have discussions with Mr. Downey regarding Mr. Holder's requests?

A Yes.

Q Of October, August and October?

A Yes.

Q And what did you and Mr. Downey discuss?

MR. WEDDLE: Objection, hearsay.

THE COURT: Does this just go to what Mr. Downey would have known?

MR. WEDDLE: Correct.

THE COURT: Based upon the witness?

THE WITNESS: Mr. Downey --

THE COURT: It's not going to the truth of the matter but whether Mr. Downey was on notice correctly or incorrectly, overruled.

MR. WEDDLE: Notice of what, Your Honor?

THE COURT: Notice of the status of the investigation is what I understood to be the inquiry.

BY MR. KARPINSKI:

Q Well, let me ask you this, let me withdraw the question and ask, start, start again. As I understood your testimony when Mr. Weddle was asking you the questions, you did not know the status of any investigations, correct?

A Other than what Judge Michael informed me, correct, I did not. And, and what I found looking on case search, the publicly available materials. That's, that's the extent of what I knew about those prosecutions.

Q And Mr. Downey was your, your supervisor at the

time, correct?

A That's correct.

Q Okay. Did you ever convey to Mr. Downey the status of any investigations?

A Same things that we've been talking about here today I mentioned to Mr. Downey, yes.

Q What did you mention to Mr. Downey?

A I mentioned to Mr. Downey that I was going to deny the PIA requests based upon the information that Judge Michael had provided to me and my belief that it was, those constituted investigatory records. And Mr. Downey was concerned, maybe frustrated is the word that why is our office getting pulled into discovery, a criminal discovery dispute between Mr. Holder and Judge Michael? And I didn't have a real good answer for that other than I told him because those messages are sitting on the County server and I, I don't, I'm not sure what to do with them. They're, they're here and we have to treat them one way or the other.

MR. KARPINSKI: Your Honor, I don't believe I formally moved into evidence Exhibit 7.

THE COURT: No, I don't think so either.

MR. KARPINSKI: Is that correct, Mr. Clerk?

THE CLERK: Correct.

MR. KARPINSKI: I would move into evidence Pet --

Respondent's Exhibit 7.

MR. WEDDLE: No objection.

THE COURT: Seven's admitted.

(The document marked as Defendant's Exhibit No. 7 was received in evidence.)

MR. KARPINSKI: Your Honor, may we take a quick break just for me to confer with my client?

THE COURT: Sure. We'll take a break until about five of.

MR. KARPINSKI: Okay, thank you, Your Honor.

THE COURT: Thank you.

THE BAILIFF: All rise.

(Recess)

THE COURT: Okay, Mr. Karpinski?

MR. KARPINSKI: No further questions, Your Honor.

THE COURT: Any, I guess we'd be on redirect?

MR. WEDDLE: Yes, Your Honor.

REDIRECT EXAMINATION

BY MR. WEDDLE:

Q Mr. Bright, you testified that you -- given somebody with your experience graduating from UB, your first experience in the private practice I believe you testified that you were barred in 1991, worked with Robert Veil for three years, went out on your own as a solo until

2019, is that correct?

A That's correct.

Q Okay, from December 1991 until 2019, you didn't handle a single litigation case related to the Maryland Public Information Act, correct?

A Did I handle a litigation matter involving the MPIA? No, I don't believe I did.

Q All right. And you'll agree with me that the MPIA process is an iterative process, would you not?

A I beg your pardon?

Q It's an iterative process, MPIA requests. Do you agree with that?

A An iterative process?

Q Yes, sir.

MR. KARPINSKI: Objection, beyond the scope.

THE WITNESS: I don't know what you mean.

THE COURT: I'll overrule the objection, but let's try to stick to what's related to the cross and if you need to come back, Mr. Karpinski, you'll get a chance to inquire further.

BY MR. WEDDLE:

Q Well, you, you testified that, I believe you testified that Mr. Holder made 100 PIA request, correct?

A By the time I left the County Attorney's Office I think that's correct, yes.

Q Okay, will you agree with me that the PIA request process is an iterative process between the requestor and the, and the County in this instance?

A I, I, I'm sorry. I'm not trying to be obtuse. I don't know what you mean by an iterative process.

Q You testified, I believe, that Mr. Holder was in a league of his own, is that correct?

A In terms, I think the question was in terms of the number of requests that we needed to track he was in a league of his own. That's, that's definitely true, yes.

Q And you had to give his request more care than others, correct?

A Some yes, some no. Taken as a whole they were a little more complicated to process because we had several of them going on at any one given time. As to each individual requests, some of his requests were fairly simple and some of them were monumental and in their scope.

Q Okay, and the ones that were monumental in their scope and breadth did you work with him to narrow those down?

MR. KARPINSKI: Objection, relevance.

THE COURT: Overruled. We'll give it the weight it deserves.

THE WITNESS: I, I did to an extent. We would

quote a fee based upon the amount of time, employee, I call it manpower, but I include men and women, involved in responding to them. Sometimes he came back with a narrowed response. Sometimes he came back asking for the records to be produced in some different format. And at least one occasion we arranged for him to come and inspect records at the Department of Environmental Services instead of actually photocopying and producing each exhibit. He would come, he came in on that occasion and tagged the records that he was interested in. And the Director of Environmental Services or I think at that time he was the Assistant Director accommodated him. I think sat in the room with him while he was marking the records. So, yes, we did in fact explore several methods of focusing the requests or changing the format in order to economize for him.

Q Okay, that sort of iterative process that you talked about that was not done with respect to the Levey emails, correct?

A Again, I'm still not sure what you mean by iterative, but did we, you know, did he ever narrow his focus? Or come up with some other method? No, that was not explored to the best of my knowledge.

Q And you didn't suggest one, correct?

A No, I don't think I did.

Q And you didn't allow Mr. Holder -- suggest, hey you can come in and, and review these emails in Mr. Levey's inbox, correct?

A I would not have allowed him to do that because of the reason for the objection to the disclosure. So, no, I did not allow him to come in and look in person at what I would not have produced and just given to him. That's correct.

Q You mentioned that I believe in your communication with Judge Michael that he referenced several matters which implicated the SAO if I, if I remember your testimony correctly. Is that, is that right?

A Judge Michael indicated that there were several criminal investigations going on. He did not purport to list all of them, nor did I ask him to list all of them.

Q Did he list any?

A I think he mentioned some or all of the conflicts with the people that he identified in his testimony in here during the conversation. But it was a very short conversation. He, he went through it very, very quickly. The testimony here was much, much longer than my con -- phone conversation with him.

Q Focusing on your, your denial letters dated August 4th and I believe October 14th, those -- I'm sorry,

let me back up a moment. During your testimony you indicated that you in responding to the request you reviewed the Public Information Act Manual, correct?

A I did.

Q And you reviewed a case called Faulk, is that right?

A I believe I did, yeah.

Q And a case called I think you said Frederick County versus the Randall or Frederick County -- it was the Randall Family case?

A It's from Frederick County. I think it's Fioretti versus Randall Family LLC. But I may be quoting the case a little off. But that's the gist of that caption, yes.

Q Yeah, Fioretti is a different case, correct?

A Fioretti, I, you know, I, the Randall Family, LLC. I do not remember the name of the other named party in that case.

Q Fair enough.

A It involved the prostitution black book if that helps narrow the case at all.

Q I'm, I'm familiar with that case. And you, I think you quoted the Blythe case? Is that correct?

A Yes.

Q Your denial letters did not include any citations

to those cases, correct?

A No, it did not.

Q Okay, and your denial letters didn't include any citations to any legal authority in 4-351, correct?

A I, I was not trying to engage in a legal debate with Mr. Holder. We would still be having that debate right now if, if I had. That was a fool's errand trying to, trying to do that. I was not interested in engaging in that kind of debate with, with Mr. Holder.

Q Okay, you were not interested in telling him the legal basis, the precise legal basis for the denial?

A I think I did that without going into every precedent of case law and I don't think I was required to go into every incident, every, every case law precedent in order to explain why the denial was made. I believe I explained in layman's terms, clearly why, the basis for the objection or the denial and the agency that originated that objection or that basis for the denial.

Q What was the basis, under 4-351 was it (a) or (b) or both?

A It could have been both, but under (b) if he was a person in interest at the, at the time certainly the disclosure would have interfered with a lawful proceeding and it would have interfered with a criminal investigation or impaired a criminal investigation and that was the gist

of what Judge Michael told me and that's the gist of what I put in the letter.

Q Well, your letter doesn't say anything about would interfere, does it?

A It does not recite the subsection, that's true.

Q Yes, it doesn't cite whether it's (b)(1), (2), (5), (6), (7), doesn't cite any of those, correct?

A I think the letter is in evidence. It, it does not do that.

Q And you had the same, I think you testified that you had the same email address when you were with, in the County versus when you were within the Sheriff's Office, correct?

A Yes, I do.

Q And was it your testimony that you believe that you're a State employee with the Sheriff's Office?

A I believe that, yes, I believe that I am a State employee compensated by Washington County because I work for the Sheriff.

Q Okay, and again, you, even though you believe you're a State employee, your emails are on the County email server, correct?

A Yes.

Q Turning -- you were present during Mr. O'Neil's testimony on Wednesday, correct?

A Yes.

Q Okay, and during Mr. O'Neil's testimony with respect to the Levey emails, which are the subject of Count Three, he testified, did he not that he sent those to you via an internal messaging system, correct?

A No, I don't believe that was his testimony. I, I -- my recollection of his testimony was that it was his frequent practice to attach the emails to, to the response, to me in that case. Or to use the internal link device. I forget now exactly what it's called. But the link by which one can access it and he didn't recall whether he had done that on this occasion or not. And that prompted me to go back through my emails when I heard his testimony to that affect and look and as I was pretty sure that, no, I did not have the actual emails. All I had was his tally of how many they were and how much, how many gigabits that occupied. So, that's when I went back through my emails and looked and found that email from Mr. O'Neil. I forwarded it, actually I printed it and handed it to Mr. Karpinski and I'm presuming that's when he provided it to you. Because my recollection was different from what Mr. O'Neil said his common practice would have been. I can only imagine that perhaps the reason he didn't attach them or do that is because of the sheer size of the number of emails and the amount of memory that it

occupied. But I don't know that.

Q Correct.

A I'm just summarizing that.

Q Okay, and the internal, we'll call it an internal link because I don't know what to call it either, that you referenced, you didn't, you didn't print that out, did you? You didn't print out the internal link, did you?

A I don't think an internal link was sent, so no, I didn't --

MR. KARPINSKI: Objection.

THE COURT: Overruled.

THE WITNESS: I'm not sure if that's a trick question or what --

BY MR. WEDDLE:

Q No, how do you know an internal link was not sent?

A I, I don't recall there being one and I don't see one referenced in the email.

Q Okay, but there could be a --

A Unless I'm missing it. I don't see it referenced in the email.

Q There could be a subsequent document, a different document, a different internal link that is not in this email, correct?

A But wouldn't, I don't remember any subsequent

emails from Mr. O'Neil on that subject. It, it, we attempted, I certainly attempted, and I found other people around me doing the same thing, to keep related emails on the same thread. And it, I don't, I was unable to find any subsequent emails in that thread. That is the thread that appeared on my email account. I don't think that Mr. O'Neil would have then on a separate, unconnected email said, oh by the way, here's the link to 45,000 whatever the number was emails.

Q It was my understanding that the internal link came through a different system, not email.

A That's not true. The, the way that works is, if I'm trying to send a very, very large attachment to you, for example then, and it's too big to attach to the email, but an email server kicks it back and says, no that attachment's too big. We won't do that, then I save it on a file over here and I email you a link that you then click on which directs your computer into that other server, into that other storage space and then you're able to download or whatever it is you want to do from that, from that server.

Q Okay, so to send you an internal link you would have had to save it on a, on a, on a, on a device, correct?

A He would have saved it on some device and then he

would have emailed me, probably included it in that same email that I identified and printed out. "Andy, there's 45 -- I think it's 529, but don't quote me on the number, emails and they can be accessed here." And it would have a link right there within the email, but then okay you click on that and then it pops you over on some other application or something to download those emails.

Q This Defendant's Exhibit 6 references, it says categories, green category. What does that mean?

A Don't know. I don't know what the green category is.

Q Do you see where it says Rachel McCarty, her email to you dated June 17th, 2020 at 1:54 p.m.? And I'm, I'm referring to Defendant's 6.

A Yes, I see that.

Q She says, "Another one, I believe this is request seven." Do you see that?

A I do see that.

Q And do you understand that to mean that as of June 7, 2020, this is the seventh request Mr. Holder made that year?

A Either that year, well, I think his emails, or I think his requests started in 2020. So, yes, I'd say that's probably true.

MR. WEDDLE: Thank you, Mr. Bright.

MR. KARPINSKI: I just have --

THE COURT: Unless, in light of -- yes, if you have some questions.

RECROSS EXAMINATION

BY MR. KARPINSKI:

Q Mr. Bright, I'm going to show you what's been marked as Respondent's Exhibit 8. I believe you testified that you had reviewed, you had referred to the Public Information Act Manual?

(The document referred to was marked as Defendant's Exhibit No. 7 for identification.)

A Yes.

Q Okay, directing your attention to the second page.

A Yes, sir.

Q The highlighted language in that? Is that something that you referred or you, you, you relied upon?

MR. WEDDLE: Objection, leading.

THE WITNESS: Well --

THE COURT: Um, overruled.

THE WITNESS: Honestly, I think, I think that language, the, the section or the, the copy that you handed me is from the July 2022 PIA Manual. So, I could not have been relying on that edition of the manual, but I

believe that that language or language very similar to it is included in the previous manual. I think we were on the 15th edition when I, when I would have answered this request. Fifteenth or 16th. I want to say the 15th. But yes, there was language very similar to that citing the same case law. And I think that language is copied directly over into the 17th edition.

MR. KARPINSKI: Your Honor, I'd move for admission of Exhibit 8.

THE COURT: Exhibit 8 is admitted.

(The document marked as Defendant's Exhibit No. 8 was received in evidence.)

MR. KARPINSKI: Your Honor, there's been a lot of discussion regarding County employees and State employees. Does the Court, is the Court willing to take judicial notice, I have a copy for Your Honor, of 12-101 of the Maryland State Government Article which defines what are considered State personnel under the Maryland Tort Claims Act?

THE COURT: And that would include the Sheriff is what --

MR. KARPINSKI: The Sheriff and the State's Attorney, yes.

THE COURT: Do you want to take a look at that?

Or are you familiar with it?

MR. WEDDLE: I am not familiar with it. Your Honor I think, quite honestly, I think this is a red herring. I, I don't know frankly what the relevance is of this. Mr. Bright has testified that, you know, whether he's a County employee or a State employee the, when he was acting as a County employee he was the custodian of the records and he has responded. I don't know why we need to get into State employee versus not State employee. I mean this, this argument I will, I will tell the Court was raised and rejected on a motion for summary judgment. The defendant certainly, if there's any sort of proper party issue here, could have, you know, they believe they could have -- there's a proper party issue, they could have filed some sort of third party action or brought the State in. I just frankly I don't understand why we're going, why we're going into this line.

THE COURT: Okay, Mr. Karpinski?

MR. KARPINSKI: Well, we're not obligated to go ahead and bring in anyone. I mean we have argued that we're not the proper party. And there is, there is a debate as to who is the custodian of records for the State's Attorney's Office and the Sheriff's Office. It's certainly not the County Attorney. But that's, that's one argument that's being raised. But all I'm asking is for

the Court to take judicial notice of 12-101 which defines what the State personnel, what constitutes State personnel, and Maryland Constitution Article 5 Section 7 which defines the State's Attorney and what are the qualifications for the State's Attorney. And Maryland Constitution Article 4 Section 44 which discusses the qualification to be the Sheriff. And all of those sections, Your Honor, point clearly that while Mr. Bright was attempting to address Mr. Holder's concerns and, and there's no question these documents were on the County server and as Mr. Bright testified, he was not trying to get into semantics about, you know, who is the "True legal custodian or not." He was trying to facilitate a resolution. But it seems to me that it is germane for the Court to take notice of the fact that the County Attorney's Office does not have any authority to dictate to the State's Attorney or to the Sheriff what its roles are, what it's duties and responsibilities are and, you know, those sections clearly make, clearly delineate that the State's Attorney, the Sheriff, people working for the Sheriff, working State's Attorneys are State employees, they're not County employees.

THE COURT: Do you take this, have any dispute, Mr. Weddle with the fact that the statute as represented by counsel is accurately presented as 12-101?

MR. WEDDLE: Your Honor, I have no dispute that the, the statute as presented by Mr. Karpinski says what it says. I have no dispute about that. I have -- I just --

THE COURT: The Court will take -- I understand you have issue with the Court taking judicial notice based upon your prior argument. Court will take judicial notice of that Statute 12-101.

MR. KARPINSKI: And a --

THE COURT: Because the State employee's --

MR. KARPINSKI: And the Constitutional provisions I referenced as well regarding the State's Attorney under the Maryland Constitution and the Sheriff under the Maryland Constitution?

THE COURT: Yes.

MR. KARPINSKI: And I have copies if it's easier for Your Honor just to --

THE COURT: Yeah, if you've got copies.

MR. KARPINSKI: -- have those here.

THE COURT: If you got copies that would be helpful.

MR. KARPINSKI: May I approach, Your Honor?

THE COURT: Yeah.

MR. KARPINSKI: Thank you.

THE COURT: You're welcome.

MR. KARPINSKI: I have nothing further. Thank you, Mr. Bright.

THE COURT: Thanks, Mr. Bright.

REDIRECT EXAMINATION

BY MR. WEDDLE:

Q Your Honor I have one, one question for Mr. Bright with respect to Defendant's 8. Mr. Bright you were handed what's been marked as Defendant's 8. It is Section -- it's taken from the Maryland Public Information Act Manual 17th Edition on July 22nd and the pages are 3-40 through 3-43. And this is, this is a, you, you indicated that you relied upon the Blythe case in formulating your denial letters, correct?

A I believe that I reviewed and familiarized myself with the Blythe case, yes.

Q And if, if the entire section of the Public, I'm sorry, Public Information Act Manual, mainly Section 8 that starts on 340, if the entire Section 8 were produced at Page 345 the Blythe case states that because a person of interest enjoys a favored status a custodian must point out precisely which of the seven grounds enumerated in GP Section 4-351(b) justifies the withholding of an investigatory record and explain expressly why it would do so, right? Would you like -- and if you don't agree with that, I can show you my computer.

A I'm sure you're quoting language from the Blythe case. The Blythe case is an unusual case in that one, the prosecution in the Blythe case was long since concluded. Mr. Blythe as I recall I believe now was sitting in a penitentiary somewhere when he made the request. And the Court of Special Appeals went a long way to overlook a lot of procedural defects in the case up until it ordered, look, give him, give him the records. So, I'm familiar with the Blythe case. I think, I thought at the time, I think now it's completely distinguishable from Mr. Holder's case where Judge Michael was informing me, no, there's ongoing active investigations. I, I don't think that the Blythe case stands for, in this as applied to these facts stands for the proposition you've cited.

Q Okay, I'm not asking you to draw legal conclusions. I'm just telling you, I'm asking you to confirm that that case, cited for that proposition of the Maryland Public Information Act Manual, correct?

A Well I think --

MR. KARPINSKI: Objection, asked and answered.

THE COURT: Overruled.

THE WITNESS: I think you're asking me to concede that the, the Blythe case stands for the proposition that on these facts Mr. Holder should have been entitled to those records. I don't think the Blythe case overrules

the Faulk case which says pretty clearly that in an ongoing investigation the reason for the non-disclosure is obvious. And the Court in Faulk says specifically that look, we're not going to use the PIA as a mechanism for expanding the criminal, the criminal discovery provisions. Which is exactly what was going on. Exactly what Judge Michael was complaining to me about. So, while Blythe does make the statement that you quoted, it, it also declines to overrule Faulk. It doesn't make any effort to --

BY MR. WEDDLE:

Q Mr. Bright, I'm not asking you for a legal conclusion or a legal analysis. I'm just simply asking in referencing the PIA Manual you saw the reference to Blythe which says because a person of interest enjoys a favored status a custodian must point out precisely which of the seven grounds enumerated in GP Section 4-351(b) justifies withholding of the investigatory record and explain precisely why it would do so. Blythe 161 Md. At 531. That's the Maryland Public Information Act Manual, 3-45 the 17th Edition, it's July 2022, correct?

A Well, if I --

MR. KARPINSKI: Objection to the form.

THE COURT: Pardon me?

MR. KARPINSKI: Objection to the form.

THE COURT: In terms of being a leading question?

MR. KARPINSKI: Leading and argumentative. And, and quite frankly, the witness is trying to answer why he does not believe the Blythe case is applicable and he was cut off of answering the question.

MR. WEDDLE: Your Honor, respectfully, the witness cannot make a legal argument why he, he believes, you know, the Blythe case applies or not. I'm -- Defendant's 8 put in an incomplete copy of Section 8 of the PIA Manual and I'm trying to draw the Court's attention to the full, you know, to full authority which directly contradicts what they're, what they're purporting it to mean. That's, that's simply all I'm trying to do.

THE COURT: Well, how do you do that without asking the witness for a legal conclusion?

MR. WEDDLE: I, yeah, I'm simply asking him, did he in reviewing this PIA Manual, did he, did he also see that? Did he also see reference to the Blythe case?

THE COURT: Just ask him directly, did he see the reference to the Blythe case?

BY MR. WEDDLE:

Q Did you see the reference to the Blythe case on Page 3-45 of the Maryland Public Information Act Manual the 17th Edition July 2022?

A I saw a reference to Blythe. I looked up Blythe

on West Law and read the opinion myself. I, I used the PIA Manual as a research guide like a legal encyclopedia. It sometimes hands you a black and white answer. It sometimes hands you leads to cases and maybe statutes that one needs to read for himself. So, I, I did see Blythe and I looked up Blythe on West Law, printed it out and read it.

MR. WEDDLE: Thank you, no further questions.

(Witness excused.)

THE COURT: All right. You can have a seat. Mr. Weddle, next witness?

MR. WEDDLE: I call Mr., uh, Mr. Holder.

JUSTIN HOLDER

called as a witness, produced on call of the plaintiff, first having been duly sworn according to law, was examined and testified as follows:

THE WITNESS: I do.

THE COURT: You can have a seat.

THE WITNESS: Thank you, Your Honor.

DIRECT EXAMINATION

BY MR. WEDDLE:

Q Mr. Holder, would you state your name, please?

A It's Justin Kyle Holder.

Q Okay, and your address?

A 308 West Chaplin Street, Sharpsburg, Maryland

21782 is my mailing address.

Q Okay, and perhaps for Your Honor's benefit who might not be familiar with the County, you reside in Sharpsburg which is located in Washington County. Is that correct?

A I, I do.

Q Okay, what's your date of birth?

A July 5th, 1977.

Q And where were you born?

A Hagerst -- Washington County Hospital July 5th at 12:55 a.m.

Q Okay, and where were you raised?

A 2 Bedrock Circle, Keedysville, Maryland a house my mother, mother and father built there in 1976.

Q After growing up and being raised, did you live in Washington County?

A Generally, you know, after high school I traveled a little bit.

Q Okay. And did you eventually come back to Washington County?

A I did.

Q Okay, and where did you live when you came back?

A 308 West Chaplin Street in Sharpsburg, Maryland with who is now my wife, Deena Holder.

Q Okay, and your current residence in Sharpsburg,

approximately what distance is that from Keedysville?

A Three miles.

Q Okay, driving time approximately how far is that?

A Five minutes.

Q Okay, during the course of your life is it fair to say that you predominantly resided within the two adjacent towns of Keedysville and Sharpsburg?

A Yes.

Q And what is your current employment?

A I am a mechanic for Carter Myers Automotive Chevrolet Toyota, automotive mechanic.

Q Okay. All right. Your Honor I'm going to respectfully submit the factual presentation of Counts Two and Four. It will be probably easier than One. So, I'm going to sort of go, not in order, I'm going to start with Count Four if Your Honor will bear with me. Okay, Mr., Mr. Holder beginning with Count Four which are the emails between Mr., Mr. Michael or Judge Michael and Defendant Bright. Those are, those pertain to requests for emails between Judge Michael and Mr. Bright, correct?

A Yes. They, they were emails between I think Mr. Michael and, and any member of the State's Attorney's Office. Or I'm sorry, Mr. Bright and any -- I think I didn't -- I don't think I limited to just those two parties. I think it was to the other members, a County

Attorney and the State's Attorney.

Q Fair enough. Mr. Holder, I'm handing you what's been marked as Plaintiff's Exhibit No. 28. Can you identify this document please?

(The document referred to was marked as Plaintiff's Exhibit No. 28 for identification.)

A Uh, this is Saturday, May 7th, 2022 5:35 p.m. email from myself at jholder2004@gmail.com to Kirk Downey, kdowney@washco.md.net, Mr. Karpinski, Kendall Desaulniers at the Washington County's Office, Mrs. McCarty and Ms., from the Washington County Attorney's Office, Mr. Parkins from Mr. Karpinski's office. And I was writing to request a public records inspection. I wanted them to note any records that were excluded under General Provision Section 351(b)(1) or (b)(7). And I quoted a letter I had gotten from Charlie Strong and the SAO prior, actually that was a letter I had gotten from Mrs. Cirincion who had quoted Mr. Strong, and she says, "As Mr. Strong indicated in his letter of September 27th, 2021 you must request emails from the Washington County Government." And I said, "I would like all the emails from the Washington County IT Department including Josh O'Neil and now former County Attorney, B. Andrew Bright." And then I gave them a couple search terms such as "'Justin', 'Holder', 'Public',

'Information', 'Request', 'Email', 'Christine', 'Morral' --", or Ms. Morral's email address that I knew morral7@msn.com. So I was, I was mistaken. I thought this was the one asking for Mr. Bright's and Mr. Michael's but this is the one for Mr. O'Neil.

Q Okay, and you, it references Mr. Strong indicated in his letter of September 27th, 2021, that you must request emails from Washington County Government, correct?

A Yes, on September 27th, 2021, Mr. Strong's responding to an MPIA request where I requested my complete investigative files. Everything that the SAO had and he, he told me, you know, basically after, after getting that request --

MR. KARPINSKI: Objection.

THE WITNESS: -- I was under the understanding --

THE COURT: Hold up, objection.

MR. KARPINSKI: It's hearsay, Your Honor.

THE COURT: It's going for the truth of the matter of the witness is --

MR. WEDDLE: Yes.

THE COURT: -- going to testify to?

MR. WEDDLE: Well, I think it goes to the notice and why he took certain actions to instead of to, to request from the County, it goes to the notice that he needed to get these documents from the County.

MR. KARPINSKI: Well, he needs to put on a witness, respectfully, Your Honor, from the State's Attorney's Office that said that they were unwilling to honor his MPIA request regarding their own records.

MR. WEDDLE: Your Honor, I do note --

THE COURT: Well, if it's going solely to why he did what he did in terms of what entity he submitted a request to, and the -- is that correct?

MR. WEDDLE: Yes, Judge.

THE COURT: Objection's overruled.

MR. KARPINSKI: Well, Your Honor, how, how could this go to his where he wanted to send or where he directed the emails that are the subject of Count one when this email is dated May 7, 2022? We were already long into this litigation by --

THE COURT: You can maintain that for argument. I've overruled the objection.

THE WITNESS: Yes, after, after sending MPIA requests to the State's Attorney when he finally got back to me, I was under the understanding that I had to go to the County to get email records. That was the custodian, that's where I had to go. So, I directed my request to the County in this matter. I filed suit against the County in this matter.

BY MR. WEDDLE:

Q Okay, Your Honor, I'd like to, excuse me, move for admission of Plaintiff's 28.

MR. KARPINSKI: I object, Your Honor.

THE COURT: Okay, 28's admitted over objection.

(The document marked as Plaintiff's Exhibit No. 28 was received in evidence.)

BY MR. WEDDLE:

Q Thank you, sir. Mr. Holder, I marked as Plaintiff's Exhibit No. 29 a document. Can you identify it for the record please?

(The document referred to was marked as Plaintiff's Exhibit No. 29 for identification.)

A Yes, this document is a Saturday, May 7th, 2022, 5:30 p.m. email from myself to Mr. Downey, Ms. McCarty, Ms. Desaulniers of the County Attorney's Office and Mr. Karpinski. I'm writing to inspect Public Records. I ask them to exclude anything -- to, to note any records that are excluded under General Provision Section 4-351(b)(1) or (b)(7). I remind them of Mr. Strong's letter of September 27th, 2021. And then this is the one where I ask for emails between Deputy State's, Honorable Deputy State's Attorney Mr. Michael or Kenneth Shapiro. I said "Including Joseph Michael or Kenneth Shapiro." So, I was

asking for anybody at the Deputy State's Attorney's. "And then now a former County Attorney, B. Andrew Bright sent or received on October 14th, 2020", and the same key words as what I used in Exhibit 28.

Q Okay. Your Honor, I'd like to move for admission of Plaintiff's Exhibit 29.

THE COURT: Twenty-nine is admitted.

(The document marked as Plaintiff's Exhibit No. 29 was received in evidence.)

BY MR. WEDDLE:

Q Mr. Holder, I've marked as Plaintiff's, a document as Plaintiff's Exhibit 30, can you identify this for the record, please?

(The document referred to was marked as Plaintiff's Exhibit No. 30 for identification.)

A This is a Saturday, May 7th, 2022, 5:42 p.m. email that I sent from my email address to Mr. Downey, Mr. Karpinski and Mr. Parkins of Mr. Karpinski's law firm, Kendall Desaulniers of the Washington County Attorney and Ms. McCarty from the Washington County Attorney. Same request to " -- note the exclusions under the General Provisions 4-351(b)(1) and (b)(7)." Same reminder of Mr. Strong's September 27th, 2021 email. And, "I would like

all emails between Honorable Deputy State's Attorney to include Joseph Michael and Ken Shapiro and now formerly County Attorney B. Andrew Bright sent or received on January 21st, 2021." Same key words as Exhibit 28 and 29.

MR. WEDDLE: Your Honor, I'd like to move into admission Plaintiff's Exhibit 30.

THE COURT: Thirty is admitted.

(The document marked as Plaintiff's Exhibit No. 30 was received in evidence.)

BY MR. WEDDLE:

Q Mr. Holder, I've marked as Exhibit, Plaintiff's Exhibit 31. Could you identify that for the record?

(The document referred to was marked as Plaintiff's Exhibit No. 31 for identification.)

A This is an email dated Tuesday, June 7th, 2022 from Brenda Pizanis who I understood to be Mr. Karpinski's legal assistant or secretary to me. Copied Mr. Karpinski and Mr. Parkins of his law firm and after reading this email I understood it to be responsive to the Plaintiff's Exhibit 28 and Plaintiff's Exhibit 29. In here he asserts that after reading it I'm, I'm aware that the County is claiming that the records I'm requesting in Exhibit 28 and 29 are attorney/client privilege or work product privilege

and that my request is being denied. And then in the, in the second portion of it it's a separate matter that he's addressing related to some sewer public information requests I had made that aren't relevant to this case.

Q Mr. Holder, how did you know that these documents existed as of June? How did you know to ask for these documents as of June 7th, 2022?

A Well I read their answers to interrogatories.

Q Okay, and what did those state?

A That these emails I was requesting were non-privileged.

Q And that was in response to answer to interrogatory No. 8?

A Inter -- yeah, what documents I believe interrogatory you read in was what documents are you going to rely on in this litigation?

Q Okay. And Your Honor I move in Plaintiff's Exhibit 31.

THE COURT: Thirty? Or 31?

MR. WEDDLE: I think it's 30.

THE WITNESS: It's labeled 31.

THE COURT: Thirty-one?

MR. WEDDLE: Thirty-one.

THE COURT: Thirty-one's admitted.

(The document marked as

Plaintiff's Exhibit No. 31 was received in evidence.)

BY MR. WEDDLE:

Q Mr. Holder I've handed you what's been marked as Plaintiff's Exhibit 32. Can you identify that document for the record, please?

(The document referred to was marked as Plaintiff's Exhibit No. 32 for identification.)

A This is a Thursday, June 16th, 2022 1:57 p.m. email sent from me to Mr. Parkins who works for Mr. Karpinski's law firm, copied Mr. Downey, copied Mr. Karpinski, copied County Administrator, John Martirano, I copied Julie Greene at the Herald Mail, Michael Lewis at the Herald Mail, Mr. Cline, President of the County Commissioners, I think at that time he was still President. And I blank carbon copied yourself and Mr. Greivell. This email is a response, there were several emails in that chain that, that aren't here. But generally, I had questioned after only receiving a denial of the August 3 -- 4 and Plaintiff's Exhibit 28 and October 14th, Plaintiff's Exhibit 29, I never got the denial for Plaintiff's Exhibit 30. I wrote back to Mr. Parkins, I wrote back to Mr. Karpinski and then Mr. Parkins produced the email that the respondent's produced

and I can find it here. But it was the one where Mr., or I'm sorry, Judge Michael was talking about I have private counsel and he sent that email to me. And I wrote back to Mr. Parkins and I said, Mr. Parkins, I, with all due respect, you know, I know Judge Michael's not an employee, but Mr. Bright is, could you look in his box? And, you know, he informed me that's where they found it and I said, so this is me coming back and I said, I really appreciate the good faith and we still have a dispute. I'd like the emails. And I think I said the County by and through their agent representative, "The County did search Mr. Bright's email address. That is where the responsive email come from. I would just kindly ask the County to look one more time. There must be at least two more emails responsive to the request because the most Honorable County Administrator, Mr. John Martirano swore the following", and then I placed a copy of Exhibit 8, or I'm sorry, ATI 8 into the email. And I believe the last page had Mr. Martirano's signature under oath representing they were non-privileged. So, I was just kind of affirming that maybe we shouldn't, the weren't privileged I guess is what I was trying to assert to them in a very kind way.

Q And that was based on the Answers to Interrogatory No. 8 that you attached on the second page

of this document?

A The representations that the County made to me under oath, yes.

Q Okay. Your Honor I move Plaintiff's Exhibit 32 into evidence.

THE COURT: Thirty-two is admitted.

(The document marked as Plaintiff's Exhibit No. 32 was received in evidence.)

BY MR. WEDDLE:

Q Mr. Holder I'm handing you what's been marked as Plaintiff's 33. Can you identify this document, please?

(The document referred to was marked as Plaintiff's Exhibit No. 33 for identification.)

A This is a Thursday, June 30th, 2022 at 4:07 p.m. email from myself directly to Mr. Karpinski. I copied Mr. Parkins in Mr. Karpinski's office. Copied Mr. Downey. Copied Mr. Martirano, copied Julie Greene from the Herald Mail and Mike Lewis from the Herald Mail, Jeff Cline President of County Commissioners, Commissioner Wagner and Commissioner Baker. And this is in response, there's again, a couple of emails missing where we were discussing that motion that Mr. Karpinski had filed and in that email I invited Mr. Karpinski to come to the Court and avail

himself of the rights that were directly at issue, that there was going to be a trial and they didn't show up. So, I assumed they acquiesced on their injunction. So, I'm writing this email back, again, I said, "-- I dispute the validity of your 'motion to stay', I also would characterize the County's 'motion to stay' as an injunction against my First Amendment Rights. In either case the trial is over, and the County failed to come before the Court and avail itself of its rights and has concluded the same." And I said, "In accordance with the Maryland Public Information Act, please provide the following records." I asked for the request again. I give them a posture of the current record and request that I had made it, you know, and you denied them. And in there I would ask them again to preserve the evidence because of the deleting from the wiretap recording of my private conversations by Mr. Levey. And I remind them that Mr. Martirano represented under oath they were non-privileged. And then I write at the bottom, you know, "I appreciate the hard work for the people at the County Government does." I remind them that I was just at the County Commissioner's Office in person a few months ago and I reminded the County Commissioners 99 percent of the time I'm satisfied with the job, but this is the one percent and I'm trying to be patient and understanding and

just asking for some redress to work through these issues and all I want is $5 in the truth. That's all I want.

Q Okay, just to focus your attention -- I appreciate that response. Just to sort of tie this together or try to tie it together. On the first page it says, "So I write to the custodians once again and make the request for public records." You're asking in this document dated June 30th for the emails between the Deputy State's Attorney, including Judge Michael and Mr. Shapiro and now former County Attorney, Mr. Bright sent or received on August 4th, 2020 and October 14th, 2020 and then you gave some key word searches, correct?

A I'm renewing my demand that I made in August, or I'm sorry. I think Plaintiff's Exhibit 28 and 29 to inspect the records that I've been unlawfully denied. Falsely, at least, against their representations under oath that they're privileged, against his motion to stay, against our discovery requests, against my request for production of documents, documents that I should have been entitled to, I'm demanding that they produce them because there's no good reason to continue to withhold these documents from me unlawfully.

Q Okay, and that request was made on June 30th, 2022, correct?

A That is correct.

Q Okay, and that, that request on June 30th was, was first made back in May of 2022 about --

A May 7th, 2022, around 5:00 p.m. on or about.

Q Did the defendants respond to this Plaintiff's Exhibit 33, your June 30th, 2022 email, did they respond within the 30 days as required under the MPIA statute?

A No, they responded after I filed suit.

Q Okay. Do you recall the date that you amended the complaint to include Count Four, which is the subject of these emails that we've just been describing?

A If I remember right the amendment of rights was July 30th and it would have been either the 30th or the 29th. On or about it was the end of July. Not 100 percent sure.

Q Okay. I don't have a calendar in front of me, but -- actually I -- Court's indulgence one second. I would like to get this right. Your Honor I, I'd like the Court to take judicial notice that the July 30th is a Saturday. So, August 1st would be the, would be the Monday when, if the Amendment of Right was on July 30th it would have been actually kicked over to the, to the 1st, which is when the amended complaint was filed.

THE COURT: Any response on that, Mr. Karpinski?

MR. KARPINSKI: I, I don't have a response, but I think those, those dates are correct.

THE COURT: Okay.

MR. KARPINSKI: The documents were produced later that week.

THE COURT: Judicial notice you're asking with respect to what did you say, August 1st?

MR. WEDDLE: Yes.

THE COURT: Okay.

MR. WEDDLE: Your Honor --

THE COURT: Judicial notice that that date was the date of the request.

MR. WEDDLE: Do you mind if I close the blinds? The sun is --

THE COURT: That's fine, yeah.

MR. WEDDLE: -- is going over my -- thank you. To the extent I haven't done so, I'd like to move in Plaintiff's Exhibit 33.

THE COURT: Thirty-three is admitted.

(The document marked as Plaintiff's Exhibit No. 33 was received in evidence.)

BY MR. WEDDLE:

Q Mr. Holder, you did not receive the, the documents you're requesting within 30 days, is that correct?

A I did not receive them within 30 days from June

7th --

Q From --

A -- or June 30th, correct.

Q Thank you. Mr. Holder, I know you have been wanting to explain Defendant's 34. Okay, can you identify this document for the record, please?

(The document referred to was marked as Plaintiff's Exhibit No. 34 for identification.)

A Yeah, I've seen this document. It's an email from Mr. Parkins who works for Mr. Karpinski to you, Jacob Weddle. It's a carbon copy of Mr. Karpinski and the subject is Justin Holder, Washington County -- this case caption and the, the emails, August 4th, October 14th and just Mr. Karpinski, or I'm sorry, I believe when I saw this email it did have the records that I was requesting attached to it.

Q Okay, so this August 4th, 2022 email had the, the emails that you were seeking and the documents we just looked for, through, pertaining to Count Four, correct?

A That is correct.

Q Okay, and you received those on August 4th of 2022, yes?

A I received them through my counsel, correct?

Q Okay. Your Honor I'd like to move Plaintiff's 34

into evidence.

THE COURT: Thirty-four is admitted.

(The document marked as Plaintiff's Exhibit No. 34 was received in evidence.)

BY MR. WEDDLE:

Q Mr. Holder, turning to Count Three, are you familiar with a man named, Barry Levey?

A Yes.

Q And how do you know Mr. Levey?

A Well I know Mr. Levey since I would say 1990, early 90's. My brother was friends with his stepdaughter and he's also the stepfather to my wife. I ran around Keedysville. I knew, I knew of Deena, you know as a platonic relationship when we were in high school. I knew that to be her stepfather. Over the years I had grown with my relationship with him. He became a close friend of me and my father. We, we did a lot of construction projects together. You know, just like any family would do, he, he bought a swing set for the kids, and we spent like three, a whole weekend with I think Deena's ex-boyfriend and Mr. Levey putting the swing set together.

I had known him from talking to him and another councilman in Keedysville, Matt Hall, during a water line project to increase, or I'm sorry, for the Town of

Keedysville's water line upgrade, discussing that with him on more of a Town municipal level. Kind of relaying some of parent's interest to him as a Town official.

So, we had sort of multiple relationships. We would, he had an HVAC business. I would help him do HVAC install. Sometimes when he did that with another fellow named Ty, when he worked at the Frederick County Maintenance Department, he would bring his cars over for me to work on when he needed work on his cars. So, you know, we had just a very, you know, multi-faceted relationship of all types.

Q Okay, and has Mr. Levey to your knowledge had any role in the Town of Keedysville?

A Yes, he was the Vice Mayor and the Water Board Chair for at least I would say two decades. Prior to that I think he was on council. But when I knew him and was engaged, he was the Vice Mayor and the Water Board head.

Q Both?

A Both, yeah it was a dual role.

Q And that was for a period of decades you said?

A At least two decades.

Q Okay. And are you familiar with the Keedysville Water Commission?

A Yes.

Q Okay, how so?

A Well, I mean when I was young my, my father, we would go to meetings together. When the town would have things, water, sewer, I would, you know, read the Town minutes. I had a post office box. I've delivered newspapers when I was a kid. I've talked to other, you know, members of the Town about kind of politics. When you're the paperboy you want to get good tips, so you sort of listen to what people have to say and you're polite. You know, hope Christmas time you -- so, I, I knew that, you know, generally we had a Water Board, they regulated water in the Town.

Q Mr. Holder, I'm handing you what's been marked as Plaintiff's Exhibit 35, which is a September 1st, well I'll let you identify it. Can you, can you identify what this is?

(The document referred to was marked as Plaintiff's Exhibit No. 35 for identification.)

A Well, it looks like this is an email, but it's more than one here. It looks like it starts on Wednesday of July 21st, 2021 at 11:07 with the records request. Similar to, similar to the -- well it's actually very specific. I'm looking for all email communications with morral7@msn.com email but I'm also very specific to include forwarded emails or cc such as the June 2nd, 2020

email forwarded to blevey@washco.net from Town Hall at Keedysville Maryland originally sent from morral7@msn.com on May 29. So, it's a very specific email and I ask them to please include all attachments to the aforesaid emails.

And then apparently on July 22nd, 2021 it looks like this would be an unsolicited, when I say unsolicited I mean they didn't, I don't know that I'm filing the second email for any reason that, that they responded to the first email and I said, "It was good to finally meet Mr. Downey in person," and I reminded them that The Honorable Judge Boyer requested I make a new request for certain documents. Remind them as a favored, a person of interest I enjoyed a favored status. Just some general things about the Public Information Act. That the discretion of the custodian weighs upon the public trust. And this was a case -- I remember now.

I found a case that Justice Scalia, I really liked his opinion on, and I knew that when custodians review State law if they don't have an answer sometimes they'll look to FOIA and it was where they comingled certain documents and, you know, I thought, I really liked Justice Scalia's opinion on it. So, I was giving that to the custodians to consider.

And then I guess I follow up where I say I think we passed the ten day window and I'm asking for the

records to be produced on or before August 20th, 21st, that I asked for. And then on Friday, August 20th, 2021 at 10:00 p.m. I write back to Mr. Downey. I express, "I'm writing with a heavy heart tonight. It's been 30 days since I've made this request." I said, I reminded them that the legislator didn't just include a civil penalty for willful and malicious violations, but they also included a criminal penalty. And I reminded them that a transparent Government is the life blood of a healthy democracy. And I believe my custodian does respect the Constitution and this must be an oversight that he just missed the 30 day period.

I appreciate all the hard work that the County Attorney does and I really hope to have a response by September 1st. Without a response I must assume it was the willful and malicious intent of the County to deny this request. And, and I did threaten to file pro se criminal charges with the commissioners of this County if I don't get the information. This is kind of the fourth time that I've requested this information. I'm a little frustrated. I apologize if, you know, I, I don't like to threaten people, but I was very frustrated when I wrote this.

And I write back again on August 30th to remind that I still have these denials and I'm honestly befuddled

to why the County would not produce the records. I really hope to inspire the integrity of the custodian and restore the trust in the public and delicately weigh the damage done by the exposure of the public records to the public view versus the deliberate, willful and malicious withholding of the same. I understand you are busy that Mr. Bright is gone. I found out that Mr. Bright had went to the Sheriff's and he didn't have any help and I regret the burden, but I've been requesting these records for at least a year.

And I amend the request again on September 1st. I realize I looked it over and I looked at my records where I had gotten at least just the email portion that I was looking for. That June 2nd email was actually on June 1st, but I couldn't get the attachments from the Town of Keedysville. They said they were destroyed or corrupted or whatever when I went in there. I think there was a, you know, a later court proceeding that I found out that there was something that happened to the attachments. So, I wanted to get the attachments to this email. Even though I had the text and I, I came back and I really said, look it was on June 1st and then I actually added some of the other parties that I knew were to the, to the email thinking maybe Barry had done replied or forwarded it somewhere, somehow that I would be able to recover this

specific email with that wiretap video that I was looking for.

Q And what, what specific, can, can you precisely define what specific email with respect to this request you were looking for?

A It was the email titled, "Please advise from Ms. Morral." She sent it to the Town of Keedysville and she attached a video, video.move where she surreptitiously recorded my conversation in the woods with Douglas Zimmerman on May 29th. And I knew it was in, I knew Keedysville had it because on December 22nd I made Greg Bishop pull up his email and I looked over his shoulder and I saw it and then that's why I sent the preservation letter on the 23rd. That put me on notice that I needed to preserve these evidences.

Q Okay, let's, let's sort of unpack that a little bit in a digestible chunk here. You, you knew the Morral -- Town of Keedysville existed on the Town of Keedysville server because you saw it, correct?

A Well, they produced that to me in a public information request that's the certified record. I believe we had it admitted at possibly plaintiff's, Petitioner's 2 or somewhere in that area.

Q Okay.

A And then Keedysville kind of gave me just the run

around about getting the attachments. You know, Mr. Bishop just technologically having problems getting them. So, I go into the Town Hall and I, you know, I kind of I don't want to say strong armed, but I said look if you can't get them show them to me right now on the computer. It's a public record. Show it to me on your computer so I can see it. I go to call Austin Flook calls him and he kind of, you know, shews me away and then, you know, that's sort of the end of that in Town Hall he doesn't want to continue the inspection I'll say. So, I knew I had to put, I had to preserve this evidence because I was afraid Keedysville was going to spoil it.

Q Okay, and that conversation with Rick Bishop, who is Rick Bishop? I don't know if the Court --

A I'm sorry.

Q -- understands who Rick Bishop is.

A Rick Bishop is the Town Administrator for the Town of Keedysville up till about, um, in September of 2021 he stopped, and Lisa Riner took over as Town Administrator. And he's also Austin Flook's quasi son-in-law. It was Austin's daughter-in-law Lori (phonetic sp.), split up with Dwayne (phonetic sp.) and so he's related to Mr. Flook.

Q Okay, so on December, if I under -- if I'm understanding correctly, on December 22nd, 2020, you

visited the Town of Keedysville, I'll call it Town Hall?

A Yeah.

Q Is that right?

A And between like 1:00 to 3:30 for a records inspection of water and sewer records that Mr. Bishop had laid out. It was similar records to what I inspected at the County to where Mr. Bright testified to 201 EPA plans, Russ, USDA Russ Loans for water piping, things like that.

Q Okay, and you saw I think you said over Mr. Bishop's shoulder you saw something?

A Yeah, I came around behind his computer and I said, show me the emails. He pulled them up. I saw the picket fence and the video highlight that is the preview page on the video.move. I saw about nine emails from Christine Morral to the Town and they, I knew they had only produced several, you know, just a few of those to me previously. And then Mr. Bishop got a phone call from Austin Flook. He said, hey, I need to take this. Hang on a minute. And then after that he was unwilling to continue the inspect process.

Q So after looking over Mr. Bishop's shoulder what did you, what did you do the next day?

A Well, I consulted with my attorney, and I sent a preservation letter to the, you know, to the Town and the County.

Q And is that preservation letter the letter at Plaintiff's Exhibit 3?

A Let me find it. Is this -- oh, these are the plaintiff's exhibits.

Q I think those are the defendant's.

A This is respondent's all right. Okay, I got you. I'll, I'll find it. Yes, sir that is, that is the preservation letter that I sent. That is correct.

Q Okay.

A That's, that's the preservation letter I sent to the County. I also sent one that was very, almost identical to the Town of Keedysville as well.

Q Okay. Your Honor, I'd like to move in Plaintiff's Exhibit 35.

THE COURT: Thirty-five is admitted.

(The document marked as Plaintiff's Exhibit No. 35 was received in evidence.)

BY MR. WEDDLE:

Q Mr. Holder did the County respond to your request in Plaintiff's Exhibit 35?

A Yeah, I did get a letter from Mr. Karpinski and I think he's explained that the emails were outside the retention setting and that seemed to be consistent with what Mr. O'Neil testified to that if somebody deleted them

for 30 days they would be, you know, double, double deleted. They would be gone. So --

Q And that, that letter that you just referenced from Mr. Karpinski, that's at Plaintiff's Exhibit 4, is that correct?

A That was the letter that I was referring to, that is correct. September 27th, 2021.

Q Okay, and if you turn to Exhibit 4, do you have that in front of you, sir?

A I do.

Q Okay, on the first page it says it references, the first page the third and fourth line it references several previous 2020 requests, Mr. Karpinski references several previous 2020 requests including those dated June 15 and June 23rd for Blevey@wash -- I think that's supposed to be co-md.net emails. Do you see that?

A I do.

Q Okay, and that, those 2020 requests those are the, those are the requests that we've looked at with respect to Plaintiff's Exhibit 2, correct?

A That's -- let me see Plaintiff's Exhibit 2. Let me find that real quick. No, I don't, well, that or I'm missing something here. Because you have, this is four --

Q Here's Page 2.

A Oh, okay, I got you. All right.

Q In Mr. Karpinski's letter dated September 27th, 2021, he references your request in June of 2020. And those are the requests set forth in Plaintiff's Exhibit 2, correct?

A That's correct.

MR. KARPINSKI: Objection as to form.

THE COURT: You being reminded of that? Or are you adopting your attorney's statement?

THE WITNESS: You know, I'm, I, I, I -- he probably ask me again because I'm not --

THE COURT: Okay, let's see if there's independent knowledge or, or refreshable knowledge.

BY MR. WEDDLE:

Q Mr. Holder, if you, if you look at Plaintiff's Exhibit I think it's 4.

A Okay, I've got that in my left hand.

Q Okay, that references in the first paragraph several previous 2020 requests including those dated June 15th and June 23rd. Do you see that?

A I see it. I'm just, I'm not seeing the June 15th request on it. I might not be looking in the right spot.

Q It's the third or fourth paragraph.

A I see it, okay, I do see it. June 15th and June 23rd, got it.

Q Okay, and what, what, what documents were those,

was that in reference to? What documents were Mr. Karpinski referencing?

A Well, the, okay, so the June, the June 15th and June 20, 23rd is I sent an MPIA request that produced the 45,239 emails that I guess was the subject of the exhibit they just brought in with where Mr. O'Neil identifies 5.47 gigs and then the June 23rd would have been where I narrowed that request trying to maybe it add some key words. So, I was still working with Mr. Bright is my understanding, to try to narrow that rather than pay $10,000.

And yes, that would be in, that was one of them. So, but there's other, I mean he's, he's referencing July 21st, 22nd, August 4th and August 20th, 2021 emails as well. And in, in this document Plaintiff's Exhibit 4, Mr. Karpinski doesn't actually say June 15th, June 23rd, 2020. However, I know that those were the, those were the only dates I would have made an email request for just Blevey emails in general.

Q Okay, is it fair to say you never received the responses, the Levey emails, any of the 45,000 emails that have been the subject of, of plaintiff's, I'm sorry, Count Three?

A To my recollection and there's been, as Mr. Karpinski has alluded to, there's been, and Mr. Bright,

there's been a lot of email traffic and PIAs. But to my recollection I've never received an email from Barry Levey in response to any MPIA I've requested for the County. I don't think, and I think the only times that I've requested them are on June 15th and June 23rd and then they would have been responsive to the Morral7 to the extent that Mr. Levey hadn't deleted them.

MR. KARPINSKI: I'm sorry, do we have the June 23 email? Is that in evidence?

MR. WEDDLE: Yeah, I think it's Mr. Bright's letter is at --

MR. KARPINSKI: That's Mr. Bright's letter, asking for $5,000?

MR. WEDDLE: Yes, Plaintiff's 2.

MR. KARPINSKI: Okay. All right, switching to Count Two, Mr. Holder, if you'll just give me a moment, I'm trying to clear some of this docu, these documents up.

THE COURT: We're going to try to pack up in about ten minutes.

MR. WEDDLE: Okay, I might be able to get through this, this area of inquiry.

BY MR. WEDDLE:

Q Mr. Holder, let's try to move this along. On August 4th, 2020, October 14th, 2020 and January 21st, 2021, you made requests to the County to provide all --

I'm sorry. You made requests to the County to "Provide all email correspondence from the following email address, morral7@msn.com and any Sheriff Deputy, County Official from May 19th to the present", correct?

A That's correct.

Q Okay. And eventually the County produced what has been marked as Plaintiff's Exhibit 7, those, those documents there, correct?

A Yeah, they produced those sometime in mid, mid to late August 2021.

Q Okay, and those documents were, you had, you filed this lawsuit prior to them producing those, correct?

A Yes, I filed the lawsuit prior to the County producing those documents.

Q Okay, and do you recall the date approximately in which you filed this lawsuit?

A March 15th, 2021.

Q Okay, and they provided those documents approximately, in, in late August 2021, approximately four and a half months, five and a half months later, correct?

A That's fair.

Q Okay. And the production they made is contained within Plaintiff's Exhibit 7, yeah?

A I've, I've reviewed this previously. I know that to be the production that they make, yes.

Q Okay. And turning to, turning your attention to the first and second document, Holder 1. I'm sorry, Holder PIA 1 and 2, that's the subject, that email is the subject of Count Two is it not?

A Well, yeah, this is the records I was looking for when I made the request. I, I wasn't asking, you know, initially for State's Attorney records. I didn't kind of like didn't even know that Mr. Michael and Ms. Morral were emailing, didn't suspect it. I knew that she had emailed the Sheriffs. I think, you know, I might have even seen this somewhere, if I was an in person inspection prior to making the request. So, I knew that the County had at least one document.

But then when Mr. Bright said records, I, I saw an "s" and I know that every little word with the County means something. Because it's always, just always seemed like I had to go back and ask again. So, I knew there was more than this record. So, that's when I made the request again. And I, I thought, you know, for her to say things like this, the rest of the information I don't know. They must be telling her something that they're not telling me. I was trying to understand what was going on in this situation, why I was being treated a certain way, why we were, you know, quite frankly allowing raw sewage to dump in the Antietam Creek and saying there's no easement to

getting it there and charging me of crimes and trying to extort me and everything else?

MR. KARPINSKI: Objection, move to strike.

THE COURT: Sustained, stricken, argument.

BY MR. WEDDLE:

Q Okay, and this email that is contained at Holder PIA response 1 and 2, that was produced to you by the County only after filing suit, correct?

A By the County only after filing suit, correct.

Q And this email at Holder 1 was not between Ms. Morral and former, former prosecutor, now Judge Michael, correct?

A Unless she blank copied, carbon copied him, and I don't see it on here.

Q Okay. The, it couldn't have been within the 16 emails between Mr. Michael and Ms. Morral that were purportedly withheld from production, correct?

A Doesn't appear to be.

Q Okay. All right. Your Honor, I'm about to launch into Count One which is going to admittedly take more time. I don't know if this is a good time for the Court to stop for the day or not.

THE COURT: It might be if you're going to break in the middle of things.

MR. WEDDLE: Oh, I --

THE COURT: Unless there, there's some other stuff you can clean up and then come back tomorrow.

MR. WEDDLE: No, actually these, these two documents look to be in the record. So, I'm good with that. I think this would be a good time to stop if Your Honor pleases.

THE COURT: Okay. As far as schedule tomorrow, I know we were potentially breaking up a bit. Can you remind me Mr. Karpinski, didn't you have something on zoom or --

MR. KARPINSKI: I have, I have a meeting with the Board of County Commissioners in Charles County that's scheduled for 10:30.

THE COURT: And you said that's about a half hour?

MR. KARPINSKI: I said it was possible it'd just take a half hour and I'm happy to take it here. I'll bring a laptop with me.

THE COURT: Okay, yeah.

MR. KARPINSKI: I'm, I don't --

THE COURT: Okay.

MR. KARPINSKI: Ideally it would have been better just to come back Wednesday but I don't, that's a lot of driving for Your Honor, as well. I get it.

THE COURT: Yeah, and it may be problematic for

me on Wednesday. What do we look like --

MR. WEDDLE: I'm happy to accommodate whatever I can to accommodate, do whatever I can to accommodate Mr. Karpinski's schedule.

THE COURT: What do we look like, any evidence? Any argument tomorrow? Is that beyond the realm of possibilities?

MR. WEDDLE: I don't know that it's beyond the realm. I, I do have a fair amount more with Mr. Holder. I don't know Mr. Karpinski intends to call any witnesses, I don't know what he, what his preference is.

THE COURT: Okay, all right, we'll see how it goes.

MR. KARPINSKI: Now, Mr. O'Neil's going to be a short witness. Do you want him back here at 9:30?

MR. WEDDLE: Yes, I think so. I think we could maybe take care of him if necessary at 9:30. Are we starting at 9:30 tomorrow, Your Honor?

THE COURT: Yes.

MR. WEDDLE: Yes.

THE COURT: So, yeah, if you could arrange that Mr. Karpinski that'd be great.

MR. KARPINSKI: Yes, sir.

THE COURT: Okay. See you tomorrow at 9:30.

THE BAILIFF: All rise.

(Proceedings were concluded.)

√ Digitally signed by Tressa Clifford

DIGITALLY SIGNED CERTIFICATE

I HEREBY CERTIFY that I reported verbatim by electronic device the proceedings in the matter of, Justin Kyle Holder versus Board of Washington County Commissioners, et. al.; Case No. C-21-CV-21-97 in the Circuit Court for Washington County, on October 23, 2023 before the Honorable Richard E. Jordan.

I further certify that the proceedings were transcribed by me to the best of my ability in a complete and accurate manner, and page numbers 4 through 222 constitute the official transcript of the proceedings. In witness whereof, I have affixed my signature this 30th day of November 2023.

Tressa K. Clifford

_____

TRESSA CLIFFORD
Transcriber